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# ASSAULT WEAPONS

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## HEARINGS

BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

**S. 386**

A BILL TO CONTROL THE SALE AND USE OF ASSAULT WEAPONS

AND

**S. 747**

A BILL TO AMEND CHAPTER 44 OF TITLE 18, UNITED STATES CODE,  
REGARDING ASSAULT WEAPONS

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FEBRUARY 10 AND MAY 5, 1989

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Serial No. J-101-1

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## ASSAULT WEAPONS

FRIDAY, FEBRUARY 10, 1989

U.S. SENATE,  
SUBCOMMITTEE ON THE CONSTITUTION,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Also present: Senators Metzenbaum and Specter.

Staff present: Deborah Leavy, chief counsel; Susan P. Kaplan, counsel; Cheryl G. Matcho, chief clerk.

### OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. The subcommittee hearing will come to order.

We are holding a hearing today on the question of what we do about assault weapons. We had a very dramatic illustration just recently in Stockton, CA, where five innocent children, who happened to be Asian Americans, were killed by an assault weapon. These assault weapons are designed for one purpose, and one purpose only, to kill as many human beings in as short a time as possible.

My home happens to be in rural southern Illinois. Most days, where we live, out in the really rural territory, we see more deer than we do people. We are accustomed to seeing a lot of hunters. I have never seen a hunter with an AK-47. I want to defend the right of hunters to have their guns, but I also want to defend innocent people.

Between 1984 and 1986, 8,000 AK-47's were imported into this country, and this is not the only weapon, I might add, that is under discussion here. In the 14 months ending in November 1988, 40,000 AK-47's were imported into this country.

A Denver talk show host by the name of Alan Berg was murdered by someone in one of these race-hating groups. He was killed by a .45 caliber bullet from a MAC-10, one of the weapons on that table. That particular weapon can fire up to 1,100 rounds a minute.

There is no purpose for any human being other than law enforcement officials to have that kind of a weapon. And I might add that when it is sold legally, it is not able to fire 1,100 rounds a minute, but it just takes literally a matter of seconds to convert a semiautomatic weapon into the automatic weapon.

We know the impact that this violence is having on our children. There was a Washington Post story just the other day where in,

celebrating Martin Luther King's birthday, children were asked, what is your dream, and they wrote down my dream is to not be afraid of being killed and other comments like that. Many children are living in fear in our society.

And let me add that the television industry and the movie industry bear some responsibility here, too. We have glamorized violence in our society. We have the most violent television of any society on the face of the Earth, and the Senate Judiciary Committee has twice passed a resolution that I am chief sponsor of, and Senator Metzenbaum and Senator Thurmond and others have cosponsored, authorizing an exemption in the antitrust laws so that the television industry can get together and establish standards so we can reduce violence on television.

We have massive evidence that violence on television is glorifying violence and causes violence in our society. The Institutes of Mental Health, the Surgeon General of the United States among others have said this.

Newsweek Magazine says there are now 500,000 of these semi-automatic weapons in private hands. Yesterday's Chicago Tribune has a story, and I will just read the first paragraph.

Chicago police staged simultaneous raids on two suburban homes early Wednesday morning and seized dozens of sophisticated weapons, including machineguns and hand grenades.

In a story in the Washington Post the other day, it says, "Asked if she favored enactment of laws banning sale of military assault guns to the public [Barbara Bush] said she thought such weapons already were outlawed. 'They should be, absolutely.'"

Ronald Reagan—lead paragraph from the Los Angeles Daily News:

Former President Reagan said Monday that he believes semiautomatic military weapons like the one used to gun down five children in a Stockton schoolyard last month should not be sold to sportsmen or the public in general.

Finally, a little item from Time Magazine, February 6, says,

And so the Stockton massacre started a new spiral in America's domestic arms race. All last week, California gun shops were jammed with customers, sometimes standing three or four deep at counters, clamoring to buy AK-47's like the one Purdy used or, failing that, some other semiautomatic paramilitary weapon.

I think the question is whether we are going to do what needs to be done to have a kinder, gentler Nation. We need more than just speeches; we need action.

[Text of Senate bill 386 follows:]



101ST CONGRESS  
1ST SESSION

## S. 386

To control the sale and use of assault weapons.

---

### IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 3), 1989

Mr. METZENBAUM (for himself, Mr. CHAFEE, Mr. PELL, and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

## A BILL

To control the sale and use of assault weapons.

1     *Be it enacted by the Senate and House of Representa-*  
2     *tives of the United States of America in Congress assembled,*  
3     That this Act shall be cited as the "Assault Weapon Control  
4     Act of 1989".

5     SEC. 2. Section 922 of title 18, United States Code, is  
6     amended by adding at the end thereof the following:

7     "(p)(1) Except as provided in paragraph (2), it shall be  
8     unlawful for any person to transfer, import, transport, ship,  
9     receive or possess any assault weapon.

10    "(2) This subsection does not apply with respect to—

1           “(A) transfer, importation, transporting, shipping  
2           or receiving to or by, or possession by or under, au-  
3           thority of the United States or any department or  
4           agency thereof, or of any State or any department,  
5           agency, or political subdivision thereof; or

6           “(B) any lawful transfer or possession of such a  
7           weapon that was lawfully possessed before the effective  
8           date of this subsection.

9           “(q)(1) Except as provided in paragraph (2), it shall be  
10          unlawful for any person to transfer, import, transport, ship,  
11          receive or possess a large-capacity detachable magazine or  
12          large-capacity ammunition belt, which can be employed by a  
13          semiautomatic firearm.

14          “(2) This subsection does not apply with respect to—

15               “(A) any transfer, importation, transporting, ship-  
16               ping or receiving to or by, or possession by or under,  
17               authority of the United States or any department or  
18               agency thereof, or of any State or any department,  
19               agency, or political subdivision thereof; or

20               “(B) within sixty days of the date of enactment of  
21          this Act—

22                       “(i) any possession of such magazine or am-  
23                       munition belt that was lawfully possessed before  
24                       the date of this subsection; or

1           “(ii) any transfer, transporting, shipping, or  
2           receiving to or by any person for the purpose of  
3           sale or donation of such magazines or ammunition  
4           belts to the United States or any department or  
5           agency thereof, or any State or any department,  
6           agency or political subdivision thereof.”.

7           SEC. 3. Section 921(a) of title 18, United States Code,  
8           is amended by adding at the end thereof the following:

9           “(25) The term ‘assault weapon’ means all firearms des-  
10          ignated as assault weapons in this paragraph and all other  
11          semiautomatic firearms which are determined by the Secre-  
12          tary of the Treasury, in consultation with the Attorney Gen-  
13          eral, to be assault weapons, as provided in this Act. Such  
14          term shall include, in addition to any other firearm identified  
15          by the Secretary, all versions of the following, including fire-  
16          arms sold under the designation provided in this subsection  
17          and firearms which are substantially identical sold under any  
18          designation:

19               “(A) Avtomat Kalashnikov semiautomatic fire-  
20          arms;

21               “(B) Uzi semiautomatic firearms;

22               “(C) Ingram Mac 10 or 11 semiautomatic fire-  
23          arms;

24               “(D) TEC 9 and TEC 22 semiautomatic firearms;

25               “(E) Ruger Mini 14 semiautomatic firearms;

1           “(F) AR-15 semiautomatic firearms;

2           “(G) Beretta AR 70 semiautomatic firearms;

3           “(H) FN-FAL and FN-FNC semiautomatic fire-  
4 arms;

5           “(I) Steyr Aug semiautomatic firearms;

6           “(J) shotguns with revolving cylinders known as  
7 the Street Sweeper and Striker 12;

8           “(K) any other semiautomatic firearm with a fixed  
9 magazine capacity exceeding ten rounds; and

10          “(L) any other shotgun with a fixed magazine,  
11 cylinder or drum capacity exceeding six rounds.

12          “(26) The term ‘large-capacity magazine’ means a box,  
13 drum or other container which holds more than ten rounds of  
14 ammunition to be fed continuously into a semiautomatic fire-  
15 arm, or a magazine which can be readily converted into a  
16 large-capacity magazine.

17          “(27) The term ‘large-capacity ammunition belt’ means  
18 a belt or strip which holds more than ten rounds of ammuni-  
19 tion to be fed continuously into a semiautomatic firearm, or  
20 an ammunition belt which can be readily converted into a  
21 large-capacity ammunition belt.

22          “(28) The term ‘semiautomatic’ means a firearm capa-  
23 ble of firing a series of rounds by a successive depression of  
24 the trigger without additional slide, bolt or other manual  
25 action.”.

1       SEC. 4. Title 18, United States Code, is amended by  
2 adding the following new section to chapter 44:

3       "§ . Identification of assault weapons

4       "(a) The Secretary, in consultation with the Attorney  
5 General shall, within thirty days after the date of enactment  
6 of this Act, determine which firearms sold, or potentially sold  
7 in the United States, in addition to those specifically desig-  
8 nated in this Act, shall be designated as assault weapons  
9 under the provisions of section 3 of this Act. The Secretary  
10 shall publish the list of firearms so designated and take steps  
11 to make the list and explanatory information widely available  
12 to the public.

13       "(b) The Secretary, after consultation with the Attorney  
14 General, may periodically modify the list of firearms desig-  
15 nated as assault weapons consistent with this Act.

16       "(c) The Secretary may issue an emergency order, for  
17 not longer than ninety days, barring importation and sale of  
18 any firearms, which the Secretary has reason to believe may  
19 be designated an assault weapon.

20       "(d) Notwithstanding any provision of this Act, no fire-  
21 arm shall be designated as an assault weapon which—

22               "(1) does not employ fixed ammunition;

23               "(2) was manufactured prior to 1898;

24               "(3) operates by manual bolt action"

25               "(4) operates by lever action;

1           “(5) operates by slide action;

2           “(6) is a single shot weapon;

3           “(7) is a multiple barrel weapon;

4           “(8) is a revolving cylinder weapon other than a  
5           shotgun;

6           “(9) employs a fixed magazine with a capacity of  
7           ten rounds or less;

8           “(10) is a rimfire weapon that employs a tubular  
9           magazine with a magazine capacity of six rounds or  
10          less;

11          “(11) cannot employ a detachable magazine or  
12          ammunition belt with a capacity greater than ten  
13          rounds; or

14          “(12) was modified so as to render it permanently  
15          inoperable or so as to make it permanently a device  
16          which may not appropriately be designated as an as-  
17          sault weapon.

18          “(e) The Secretary, in consultation with the Attorney  
19          General, shall, when appropriate, recommend to Congress  
20          any appropriate modification of this Act, including the addi-  
21          tion or deletion of firearms to be designated as assault weap-  
22          ons: *Provided*, That the Secretary shall submit an initial  
23          report containing any recommendations regarding the type of  
24          firearms designated as assault weapons no later than three  
25          months after the date of enactment of this Act.”.



1        SEC. 5. Title 18, United States Code, is amended by  
2 adding the following new section to chapter 44:

3        "§ . Use of assault weapons

4        "(a) Whoever, during and in relation to the commission  
5 of a crime of violence or drug trafficking crime (including a  
6 crime of violence or drug trafficking crime, which provides  
7 for an enhanced punishment if committed by the use of a  
8 deadly or dangerous weapon or device) for which he may be  
9 prosecuted in a court of the United States, uses or carries an  
10 assault weapon, shall, in addition to the punishment p.vided  
11 for the commission of such other crimes committed by the  
12 defendant, be sentenced to a term of imprisonment for not  
13 less than five years.

14        "(b) For purposes of this subsection, the term "drug  
15 trafficking crime" means any felony violation of Federal law  
16 involving the distribution, manufacture, or importation of any  
17 controlled substance (as defined in section 102 of the Con-  
18 trolled Substances Act).".

19        SEC. 6. (a) Section 5812 of title 26, United States  
20 Code, is amended by inserting the phrase "or assault  
21 weapon" after "firearm" wherever it appears.

22        (b) Section 5822 of title 26, United States Code, is  
23 amended by inserting the phrase "or assault weapon" after  
24 "firearm" wherever it appears.

1       (c) Subsections (a), (b), and (c) of section 5841 of title  
2 26, United States Code, is amended by adding the phrase "or  
3 assault weapons" after "firearms" wherever it appears and  
4 adding the phrase "or assault weapon" after "firearm" wher-  
5 ever it appears.

6       (d) Section 5841 of title 26, United States Code, is  
7 amended by adding the following new subsection:

8       "(f) Any person in the possession of an assault weapon  
9 on the date of enactment of this Act shall register such fire-  
10 arm with the Secretary under such regulations as he may  
11 prescribe. Such registration shall be required for any type of  
12 assault weapon not later than thirty days from the date the  
13 Secretary provides public notice that the type of firearm is  
14 designated as an assault weapon or promulgates regulations  
15 for registration, whichever is later: *Provided*, That any fire-  
16 arm specifically designated as an assault weapon in para-  
17 graphs 921(a)(25)(A)-(I), as added by this Act, shall be regis-  
18 tered within thirty days of the promulgation of regulations for  
19 registration by the Secretary."

20       (e) Section 5861 of title 26, United States Code, is  
21 amended by adding the following new subsection:

22       "(m) to fail to register an assault weapon in violation of  
23 the provisions of this chapter."

24       (f) Section 5845 of title 26, United States Code, is  
25 amended by adding the following new subsection:

1       “(i) ASSAULT WEAPONS.—The term “assault weapon”  
2 shall have the meaning provided in section 921 of title 18.”.

3       SEC. 7. EFFECTIVE DATE.—Unless otherwise provid-  
4 ed, this Act shall become effective thirty days after the date  
5 of enactment of this Act.

Senator SIMON. I have asked Senator Metzenbaum, who has shown a real interest and leadership in this area, to cochair this hearing, and I am pleased to call on him now for an opening statement.

**OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO**

Senator METZENBAUM. Thank you, Senator Simon, and thank you for the dispatch with which you have moved forward in setting up this hearing. And I am grateful to you for permitting me to join you and sit in as cochair of this hearing, but I am not really surprised. You are really one of our stalwarts in the Senate and you have always been there, ready, willing, and able to take on the battles and to provide leadership. You are one of our greats.

We Americans guard our individual rights and personal freedoms intensely, and we always will. We Americans also seem to have an innate sense of where to draw the line, the line where the right of an individual tramples on the freedom we all demand.

That line has been crossed many times before. For example, when special teflon-coated ammunition came to be widely recognized as cop killer bullets, we drew the line. When automatic weapons like machineguns became all too cheap and all too available to anyone who wanted one, again, we drew the line. When plastic handguns became the next new technology in the arsenal of terrorism, we drew the line.

Once again today, we are here to draw the line. Assault weapons are designed for one purpose, and one purpose alone, for killing human beings. They are weapons of war. Yet, they are available for sale over the counter, without any waiting period or background check, in every region of the country, in nearly every county of every State.

Let us face it; they should not be. We have learned that the hard way. They are too easy to obtain and too efficient in their objective.

Two days ago, after 2 weeks of discussion and deliberation and drafting, I introduced a bill, cosponsored by Senators Chafee, Pell, and Cranston, to ban the manufacture, importation, possession, and transfer of new assault weapons.

Patterned after our laws on machine guns, the bill requires the registration of assault weapons currently and lawfully owned by private citizens. Persons who own these weapons would be allowed to keep them, but through registration law enforcement authorities would be able to keep records on ownership and transfers.

Any transfer or sale of a lawfully possessed assault weapon would be subject to a thorough background check of the buyer similar to the current machinegun check. Photographs and fingerprints would go to the Bureau of Alcohol, Tobacco and Firearms.

Before BATF could approve a sale, the buyer would be required to provide a signed certificate from a local law enforcement official. That would allow the local authorities to stop the sale of an assault weapon to someone known to the police as a risk to the community.

If such a procedure had been in effect last August, the local police would not have allowed Patrick Edward Purdy to buy the

AK-47 he used to massacre five children in a California schoolyard.

I have to say that was an unbelievable kind of incident. To walk into a schoolyard and mow down five little children who were not harming anyone just shocks the imagination, shocks the conscience of all of us.

We drafted this bill carefully and cautiously to do something about it so that it would not happen again, but we drafted it also so as not to limit the right of an individual to purchase a legitimate hunting rifle or handgun.

The bill's coverage is limited to a specific list of the most dangerous military weapons now available and to firearms with large, fixed magazines which make them suitable for raining gunfire, but unsuitable for hunting game.

The bill also prohibits the transfer, possession, and importation of detachable magazines and ammunition of 10 rounds or more. This will prevent the conversion of legitimate firearms into assault weapons. Hunters routinely use magazines containing as little as three rounds or as many as eight rounds. That practice will continue unchanged.

I will not go into every technical provision in the bill at this time. Its text and an explanation is available here in the hearing room.

I have also asked the National Rifle Association to contribute any suggestions which will alleviate any concerns they might have about the scope of this legislation. We want to work with those who are concerned about the rights of hunters and those who are concerned about the right of an individual to have a gun in their home for self-protection. We don't want to affect that situation at all.

Frankly, I know of only one argument against this bill. I have heard it before. Opponents of the bill will claim that law-abiding, permit-holding sportsmen will be denied access to legitimate sporting weapons. It will not, and I want to emphasize that.

To all of those who are concerned about the right to go hunting, to the sportsman, this bill will not affect your rights at all. It will affect the so-called street sweeper. This weapon is capable of firing 12 shotgun blasts in 3 seconds. It was not designed for use in a duck blind; it was actually designed for crowd control in South Africa.

It will affect the UZI, every drug lord's favorite. It can fire 30 rounds in 5 seconds. And it will affect the AK-47. We know of only one instance in which this was used for hunting, when a psychopath in California went hunting school children.

Today, AK-47's are flooding into the U.S. market. And who wants them, hunters, sportsmen? No; more likely, drug dealers, and if we don't put an end to it, it will soon be open season on police officers.

I have worked with the police officers of this country on several other pieces of legislation in the past and they have been stalwarts in this battle. They are concerned about their safety and their security on the streets of America. They are concerned about the fact that the drug dealers are better equipped with weaponry than are they.



The weapons of war targeted by this bill have no place on the streets and in the schoolyards of America. President Reagan said it very well the other day:

I do not believe in taking away the right of the citizen for sporting, for hunting, and so forth, or for home defense. But I do believe that an AK-47 \* \* \* is not a sporting weapon or needed for defense of a home.

Frankly, Mr. Chairman, I am hopeful we can move this bipartisan legislation promptly. The American people won't tolerate the carnage caused by these weapons. Once again, it is time to draw the line.

Thank you, Mr. Chairman.

Senator SIMON. Senator Specter.

#### OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you, Mr. Chairman.

The recent incident involving Patrick Purdy in Stockton, CA, points up many gaps in our criminal justice system which I think have to be addressed, and I am pleased to participate in this hearing today.

The issues involved in violent crime are matters that I have been intimately associated with for the past 30 years since I was an assistant district attorney in Philadelphia and have seen the problems of weapons and seen the problems of repeat offenders and the problems of violence.

The Purdy situation was a ruthless, insane, inexplicable killing of youngsters which is so aberrational as to be shocking, really, beyond belief. But the problems illustrated with Purdy are applicable, as Senator Metzenbaum has pointed out, to the issue of drug dealers and the tremendous violence on the streets of our country today in the context of drug dealing.

The background of Purdy makes it hard to understand how a man like that could be on the street. He has a long criminal record, and referring only to a part of it which relates to his contact with guns in the past, in 1983 he was arrested in Beverly Hills on a dangerous weapons charge, convicted on a misdemeanor and put on probation.

In 1984, on October 1, he was arrested in Woodland, CA, charged with attempted robbery and criminal conspiracy. Implicit in that charge is the use of a weapon, although the information I have does not specify that. There was a plea bargain. He pleaded guilty to a misdemeanor offense and served 30 days in jail.

Then in April 1987, in El Dorado County, he was charged with firing a pistol in the El Dorado National Forest and with resisting arrest. While in custody, he attempted to commit suicide by hanging and cutting his wrists. He pleaded guilty, served 45 days in jail, and was put on probation.

Purdy really fits into the category of the career criminal where we know that action ought to be taken and where this country, simply stated, hasn't done it. We did pass legislation which I introduced in 1984 making it a Federal offense, bringing the Federal Government for the first time into street crime, where we defined a career criminal as someone who had three or more major felonies



and found in possession of a firearm, and was then subject to a mandatory sentence of 15 years to life.

When you get life in the Federal system, that means 15 years. Everybody in the Federal system is eligible for parole on a life sentence, absent a special prohibition against any parole. We expanded that Act in 1986 to cover drug dealing, so that here we have another illustration of a very badly flawed and failed judicial system.

There are a number of serious problems illustrated on the plea bargaining. Cases are plea-bargained repeatedly in our country because there are insufficient prosecutors and judges to try cases. It is a practice which should be abandoned, something that I did not do as district attorney of Philadelphia.

In 1972, the National Commission on Criminal Justice Standards and Goals articulated a policy that plea-bargaining ought to be abolished in this country, a recommendation which has not been followed because of the insufficient number of courtrooms and prosecutors and judges to handle the cases.

In the situations where someone is finally convicted, regrettably there is no place to put them, and the judges concede that they do not sentence people to jail where they should because there are insufficient jail cells.

I have been on the issue of trying to get more jail construction for a long time, and finally, last year, the budget resolution did pass for increased jail cells, but it was dropped in conference, a subject that I intend to renew again this year.

We made a constructive step last year in the drug bill on a direction to the Attorney General to devise a system where there could be an instantaneous record check so that if someone seeks to purchase a firearm, there could be a check on the spot, very similar to American Express, for example, checks your credit card to see if you are paid up.

There is no reason in this country why we should not be able to know where someone has a criminal record. We have computerization which has handled virtually every facet of the commercial world's business, technology, outer space, weaponry, et cetera. That is another line which I think is illustrated by the underlying facts here in Purdy and in other related cases.

So, this incident poses a great many very important issues and I am pleased to participate here today, Mr. Chairman, and to try to bring the experience that I have had in law enforcement and on this committee to try to find a way to correct this gross injustice and these excessive gaps in our criminal justice system.

Thank you.

Senator SIMON. Thank you, Senator Specter.

Before I call on the witnesses, let me just mention that we had a great many people who wanted to testify. We could not accommodate all the witnesses who wanted to testify. I do want to move fairly expeditiously on this legislation, so that if people have ideas for what ought to be in legislation in any way, either a modification of Senator Metzenbaum's bill or any other ideas, if you can get those ideas to us in the very near future, I would appreciate it.

To our witnesses, because we do have a number of witnesses, we would ask that your testimony be limited to 5 minutes so we can spend the remaining time on questions.

Our first witness is Mr. Edward Conroy, the Acting Deputy Associate Director for Law Enforcement of the Bureau of Alcohol, Tobacco and Firearms. Mr. Conroy, we thank you for being here.

**STATEMENT OF EDWARD D. CONROY, DEPUTY ASSOCIATE DIRECTOR, LAW ENFORCEMENT, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Mr. CONROY. Mr. Chairman, members of the subcommittee, thank you for inviting me here to appear before this committee to address you on the subject of semiautomatic firearms and the obvious increase in firearms-related violence.

I have submitted a longer statement for the record and, with your permission, I will summarize it at this point.

Senator SIMON. Your full statement will be entered in the record, as well as the full statements of all of the witnesses.

Mr. CONROY. Thank you.

This committee is well aware that seldom does a day pass when we do not hear of some firearms-related violence, whether it be a drug-related shootout, a tragic, senseless shooting of innocent victims by a seemingly crazed individual, or a gun battle between law enforcement officers and an armed career criminal. These types of incidents are seemingly commonplace and evoke the outrage of all Americans.

The Bureau of Alcohol, Tobacco and Firearms is the law enforcement agency tasked with the responsibility for enforcing the Federal firearms laws and regulations. Let me state that ATF is totally committed to using these laws in the ongoing war on drugs, and particularly drug-related firearms or violence.

Further, we are using the additional weapons provided by Congress in 1984, with the passage of the Armed Career Criminal Act, to stop the repeat offender who is responsible for the increase in murders, robberies, and aggravated assaults.

Unfortunately, the crazed, random shooter whose actions can never be rationalized or predicted is another problem entirely. Because of the difficulty in pre-identifying these individuals, we must rely on observant and concerned citizens who report to police changes in behavior of individuals. Tipsters and firearms dealers are also very important, as they alert law enforcement officials when questionable individuals acquire firearms.

Fifteen years ago, police rarely encountered armed drug dealers. Today, it is a different story. Local crime statistics reflect the increasing use of firearms in drug-related murders and homicides.

Violent incidents involving the killing of police have increased at an alarming level. During 1985 through 1987, 198 law enforcement officials have been killed in the line of duty by firearms.

The illegal traffic and use of firearms is tied to the growing drug trade, and today's criminal is armed to kill. The weapons of choice range from the semiautomatic 9-mm pistol to the AR-15 semiautomatic rifle, to fully automatic machineguns.

The recent senseless slaughter of children by a man wielding a sinister, military-looking weapon causes us to ask not only why, but how. We have heard the firearm used in this tragedy described

in many ways—assault rifle, paramilitary weapon, AK-47, AKS-47, AKS, AK-47S, and so forth. It goes on and on.

In terms of the Gun Control Act of 1968, as amended, these types of weapons are defined as rifles. The particular weapons in question happen to be rifles that function in the semiautomatic mode.

To purchase a semiautomatic rifle, an individual need only certify to a firearms dealer that he is not a felon or a fugitive from justice, not an unlawful user or addicted to any controlled substance, never been adjudicated as a mental defective, that he is not an illegal alien or has not been discharged from the armed forces under dishonorable conditions, and has not renounced his citizenship in the United States.

The individual completes the firearms transaction form and is free to receive the firearms unless there is some State prohibition. Only three States currently have waiting periods for purchasing rifles, and those States are Hawaii, Illinois, and Pennsylvania.

The terms "assault rifle" or "paramilitary weapons" are not defined in Federal law. Generally speaking, "assault rifle" is a label attached by the manufacturer or by some military entity.

"Paramilitary weapon" is a term that, depending on who is using it, can refer to anything from a firearm painted black or olive drab to a weapon employed by a group that follows a military-like regimen. Usually, it identifies a weapon that has been modeled, at least in appearance, after an already existing military weapon.

There can be little doubt that increased fire power is now more available than ever before. The drug trafficker, the career criminal, and the unstable individual, cued by whatever stimulus, is reaching for those firearms that he has seen portrayed in the media as firearms of his particular ilk.

Whether or not the media influences the types of firearms selected by criminals can be debated. However, a point that cannot be debated is the fact that we are now more than ever before aware of the escalation of firearms-related violence and the increasing potential for this type of violence.

Gentlemen, that concludes my statement and I will be happy to try to answer any questions at this time.

Senator SIMON. Thank you, Mr. Conroy. First, I would simply like to underscore what you have said in your statement, and that is we are not only threatening innocent school children in Stockton, CA, but increasingly those who are out there in the line of duty to protect all of us. The police are being threatened by this growing number of firearms.

This may be an awkward question for you, Mr. Conroy, because I know you are in a position of Acting Deputy Associate Director and you can't speak for an administration at this point. But just in general terms, speaking personally, do you think there is a necessity for some kind of legislation to reduce the flow of these assault weapons into our society? I am not asking you to specifically endorse the Metzenbaum legislation.

Mr. CONROY. Senator, I would have to know and have an idea what the nature of the proposed legislation was to give an opinion as to how it would impact the criminal element. I will say this, however. Any type of legislation that is framed or drafted in relation to what we are referring to her this morning as assault or

paramilitary type weapons, there will be an inherent difficulty in drafting this.

The difficulty is that it is going to be very hard to draw a clear differentiation and distinction between what we have as an assault-type rifle and a semiautomatic sporting weapon.

The assault weapon has a very menacing appearance to it, but this gun technologically as far as how it fires is pretty much the same as a sporting semiautomatic rifle, with the exception that this firearm has an exotic type appearance to it.

It has a banana clip. If you remove this clip and put a standard clip in it and put a standard type stock on it and remove the bayonet mount, it would also even have the appearance of a sporting-type weapon.

In relation to the legislation, that would be a problem that would have to be overcome right at the onset, Senator.

Senator SIMON. But assuming we can deal with that—and I recognize there are some technical difficulties there—and I understand that you would want to see the specific legislation, but is it desirable to have some greater control through legislation of these weapons coming in?

Mr. CONROY. Well, we share your concern. We share the concern of the country that we don't want to see these type of weapons getting into the hands of criminals. In relation to additional legislation, if that would impact favorably on that, that is something that I think the department would have to make a determination on.

Senator SIMON. OK. I understand your reason for being somewhat evasive here. When you say you don't want to have those weapons in the hands of criminals, is there any reason any citizen should have one of those weapons with the banana-type attachment there? Is there any reason any citizen should have that?

Mr. CONROY. Well, as you know, Senator, these particular type of guns are manufactured outside the country and imported in. In order for them to have an approval to import these guns, they have to satisfy certain criteria, and the basic criteria that is established is that it would be suitable for sporting or competitive or hunting type purposes.

Based on that, there are some legitimate reasons that a person would possess a gun like this, but we do see many criminals—we see drug dealers, we see armed career criminals, we see hate-terrorist groups that have gone to this type of weapon, and that gives us great concern, Senator.

Senator SIMON. I don't know if you spend as much time with hunters as I do, but I have never seen a hunter with a banana clip on his gun.

Mr. CONROY. Nor have I, Senator.

Senator SIMON. OK, all right.

Senator SPECTER.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. Conroy, you talked about the Armed Career Criminal Act of 1984. How useful has that been in the efforts by the Bureau of Alcohol, Tobacco and Firearms in dealing with the gun problems as it relates to being in possession of career criminals?



Mr. CONROY. If I could, Senator, I would like to address it even a little broader than that as far as the impact not just with the ATF, but the entire law enforcement community.

Senator SPECTER. Fine.

Mr. CONROY. This, without a doubt, is the best piece of legislation that ever came down to give a new tool to law enforcement. Never before did we have a law where we could take career criminals out of society for 15 years, and we have taken great advantage of that.

Every one of our 22 district offices throughout the country has initiated what we call a Project Achilles program. Basically, Achilles is where we have identified career criminals, people that have had these prior three felony convictions that make them vulnerable to this 15-year sentence.

And if I could just relay some statistics, since October 1986 we have sentenced over 380 violators on the armed career criminal statute, and the total, aggregate sentence is over 4,100 years, with an average 11-year sentence for these people.

And as you well know, the majority of crime in any major metropolitan area, we can attribute that to a handful of career criminals. And when we have a law that can take these people off the streets for 15 years or more, then I think in the long haul we are going to have some impact on violent crime.

Senator SPECTER. I am obviously delighted to hear you so complimentary about the act. What further resources do you need to implement it more broadly? We have given you additional appropriations with additional agents to enforce the Armed Career Criminal Act and, I might say to you, over the objections of the Secretary of the Treasury last year, who appeared before the Appropriations Committee.

But we have voted additional resources. What further could we do for you by way of additional wherewithal to enforce that act, considering your very strong endorsement of it?

Mr. CONROY. Well, we certainly appreciate the resources that you were responsible for getting us in the past, Senator, and I can assure you we have put them to good use in the area of armed career criminals.

I think right now we are in pretty good shape. ATF is stronger manpower-wise than we have ever been before, and a good percentage of our street agents are working in relation to these Operation Achilles type programs.

Senator SPECTER. Well, I think you could be in better shape, frankly, on the enforcement of that legislation with more resources.

Let us turn to Patrick Purdy and consider his record, and explore for a moment what might have been done, in retrospect, to identify this man and to have, (a), stopped him from acquiring this kind of a weapon or, (b), to have put him in jail so he couldn't do anything.

Have you examined Purdy's criminal record?

Mr. CONROY. I have not. I have a general knowledge of it, Senator. We have a mechanism in place right now, which I am sure you are familiar with, at licensed gun shops. It is called the Firearms Transaction Record Form, a 4473 form. And on that form, before you can consummate the purchase of a firearm, you have to

answer a number of questions on there, some of which are: Have you ever been convicted of a felony, are you a fugitive from justice, narcotic addict, and it goes on. There are about 8 to 10 questions.

If the individual would answer "yes" to any one of these questions, the firearms dealer would be prohibited from selling him the gun. But if he goes in there and he does not have any of these disabling type incidents in his life, then he can purchase a gun.

We also have a situation where felons, people like Mr. Purdy, go in and they will falsify these forms. They will indicate "no" when, in fact, they were disabled, or they will come in and they will utilize fictitious identification and they will successfully consummate the purchase of a gun.

Mr. Purdy would have had to have had a felony conviction, a disabling conviction, and he would have to have indicated that on the form in order for the dealer to have been cued in to say, hey, I can't sell you this gun.

Senator SPECTER. Well, isn't it true, Mr. Conroy, that from your experience as a police officer, or I could testify from my experience as a district attorney, that these plea bargains repeatedly take felony convictions which would be disabling and turn them into misdemeanors so that people are not disabled from acquiring firearms?

Mr. CONROY. That is true, and it varies from State to State as to what constitutes a felony. That is very true, Senator.

Senator SPECTER. Mr. Conroy, what stands between the practicality and our current technology of being able to have on computer criminal records so that there could be a check of a person's prior record at the time of purchase of a firearm, just as the American Express card is checked to see if you are current on your payments?

Mr. CONROY. We are working right now, Senator—you mentioned that the Congress has charged the Attorney General with doing a 12-month study to come up with an immediate and accurate means by which you can identify somebody as being a felon at a gun shop. We are part of that committee working with the Department of Justice.

In practicality, one of the main problems on this is under the amendments to the Gun Control Act, it changed the definition of a felony. Before, a felony was if you were convicted of a crime that carried a maximum penalty of more than a year and a day and you only get 6 months' probation, you were a felon. You were disabled. You forfeited your rights to possess or buy a gun again.

Under the amendments to the law, it depends on what the municipality or jurisdiction considers that. If they consider it a misdemeanor, it is a misdemeanor. If the person later on has his rights restored to him by the State or he is pardoned, as far as the Gun Control Act is concerned, he is not disabled.

So, we have a wide disparity right now throughout the country as to what constitutes a felony. Also, those type of records are not in the indices any place, in NCIC or computerized criminal histories.

It would tell us that Mr. Johnson appears to have incurred a felony conviction, and just knowing that at the gun shop, that does not mean he is disabled. We would have to go back, then, and es-



tablish at the jurisdiction where he incurred that felony if he was ever pardoned or he had it expunged.

So, that is one of the practical problems that we are trying to address and look at. It is not impossible, but it is difficult.

Senator SPECTER. Perhaps we should amend the law to change the definition of a disabling event. It should not be affected by an expungement of a record. That is a relatively simple thing to do in a great many jurisdictions. You file a petition and you give some reason and a lower court judge can expunge a record.

I don't think it ought to be affected by a pardon, and perhaps we ought not to rely upon a felony definition. If somebody misuses a firearm and commits a crime with a firearm, there is nothing sacrosanct about the common law definition of a felony.

Mr. CONROY, I think it would be useful if you would give some thought to how we might sharpen up the definition of what constitutes a disabling crime because there is no reason why we can't have stringent disabling offenses for the criminal and not have the loopholes.

When you come to the issue of the indices, I think there you really are on the critical aspect of the matter. How do we get our files in this country in shape so that we have criminal records in the computer system so that the index can be checked?

Mr. CONROY. I am not sure. That is a major undertaking, and then on top of that, Senator, you have to establish, first of all, that the person that is standing in front of you across the counter at that gun shop is, in fact, who he says he is.

I mean, if he comes in with fictitious identification and date of birth and what have you with a fraudulent driver's license for somebody who has never incurred a disabling crime, that would further nullify the effectiveness of that system. So it is kind of a two-phased thing.

Senator SPECTER. Well, aren't there some techniques now available on the fingerprint aspect which can transmit that information electronically and make a positive identification?

Mr. CONROY. There is, but that would involve, I believe, having a fingerprint on file for everybody. You would almost be talking about a national identification type system.

There are other things, too, other biometric type things. You get into retinal scans and very sophisticated things of this nature. Those are all things that are being considered right now by this committee that we are part of.

Senator SPECTER. Well, the difficulty of identifying the person before you is always going to be with us no matter what the system is, and you can't have necessarily all the fingerprints on file, but those who have criminal records have customarily been fingerprinted.

We urge you to finish that study at the earliest time. I wanted to have a 6-month period and I think a year was too long from the date of the legislation last November, but I think that is a very important matter to resolve.

Thank you very much, Mr. Conroy. Thank you, Mr. Chairman. Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. Mr. Conroy, thank you for your testimony. Do these weapons, the AK-47, the UZI, and others you have demonstrated, create a law enforcement problem?

Mr. CONROY. They certainly do, Senator.

Senator METZENBAUM. And does the BATF have evidence that drug dealers are increasing their demand for these weapons?

Mr. CONROY. They have. Since the early 1980's, they have gone to these type of weapons as what you might call tools of the trade or preferred type weapons, yes.

Senator METZENBAUM. What is the standard size magazine used by hunters today if they are using semiautomatic rifles?

Mr. CONROY. I would estimate probably a 5-round clip, I would think.

Senator METZENBAUM. Do you believe that the machinegun law works, and has it helped to keep fully automatic weapons out of the hands of criminals?

Mr. CONROY. It certainly helps us to keep control and tabs where these type of firearms are. But the majority of occasions through my experience, and particularly down in south Florida during the height of the drug trafficking down there and the violent crime when we saw so many machineguns and silencers and typical gangster type weapons, we only encountered—and during my 6 years there, we seized close to 1,000 machineguns—only one or two that had ever been registered before, and they happened to be ones that were stolen in residential burglaries.

All these other ones for the most part were guns that were originally born or manufactured as a semiautomatic firearm and it was later converted into a machinegun through clandestine type factories.

Senator METZENBAUM. Senator Specter has inquired of you concerning whether or not Purdy might have been precluded from going forward with his purchase if there had been a computerized system in order to check him out and that type of thing.

But isn't it the fact that whether or not we had such a system that under our bill he could not have bought the AK-47 and created the havoc that he did?

Mr. CONROY. Which bill is that, Senator?

Senator METZENBAUM. The one that Senator Chafee, I, Senator Cranston, and Senator Pell have introduced.

Mr. CONROY. I have not personally had an opportunity, Senator, to take a look at your bill at all.

Senator METZENBAUM. As a matter of fact, though, no matter how many computer checks of the record, without some ban on AK-47's and other semiautomatic assault weapons, won't they continue to be a problem unless you have some ban?

And I understand the difficulty that you mentioned with respect to definition, but isn't it a fact that the Purdy's are going to be able to get these guns unless we have some extensive check?

Our bill provides for your Bureau making a fingerprinting and checking it out thoroughly, finding out what the record is, and the local police officers having an opportunity to check it out. In fact, we contemplate maybe taking as much as 8 weeks in order to do that.

Isn't it a fact that without some further banning, some further activity in connection with the AK-47's and the semiautomatic weapons, the Purdy's of this world, and the drug dealers, more importantly, are going to be able to get guns of this kind?

Mr. CONROY. I would assume that this could possibly be a help, but it would be speculation on my part as to the degree of it, though.

Senator METZENBAUM. I thank you very much. Thank you, Mr. Chairman.

Senator SIMON. Just two more very brief questions. Why do you think we have had such an explosion in these semiautomatic weapons?

Mr. CONROY. I think there is probably a combination of reasons, Mr. Chairman. In respect to this type of weapon here, the AKS, I believe it is primarily an economical type of thing.

Years ago, this gun at the retail level sold for about \$600. Now, it is much cheaper. You can purchase it in the high \$200's and low \$300's. That is one reason. Another reason is that there is a great demand within the criminal element for the type of weapons that provide a lot of firepower for them—your drug dealers, your career criminals.

And the third thing is that this is a very easily recognizable type of gun. Over the last 8 to 10 years, there are not too many weeks where you don't see this weapon on the front page of a newspaper. As a matter of fact, Monday, in our paper here, there was a picture on the front page with five or six individuals holding the weapon up like this, Middle Eastern people.

Senator SIMON. You will be on the front page tomorrow holding it up there. [Laughter.]

Mr. CONROY. At any rate, it is recognizable. The movie industry has used this as a prop time and time again. So, combining those reasons, I think that would aggregately contribute to the demand for these type of guns.

Senator SIMON. Let me just add, I would hope that your Bureau could be of assistance as we draft this. Frankly, we need from your Bureau—and I am not criticizing you because I know you have to do what you are told in terms of testifying, but we need not only numbers and the statistics; we need your judgment on what we ought to do, where we ought to go to protect American citizens better.

Mr. CONROY. Senator, when asked by Congress, ATF is always happy to work with you in drafting legislation, if you will, that is designed to make our streets safer.

Senator SIMON. If there are no further questions from my colleagues, we thank you very, very much for your testimony.

Mr. CONROY. Thank you.

[The prepared statement of Mr. Conroy follows:]

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Statement of Edward D. Conroy  
Deputy Associate Director, Law Enforcement

Thank you for inviting me to appear before this committee to address you on the subject of semi-automatic firearms and the obvious increase in firearms-related violence. This committee is well aware that seldom does a day pass when we do not hear of some firearms-related violence. Whether it be a drug-related shoot-out, a tragic, senseless shooting of innocent victims by a seemingly crazed individual or a gun battle between law enforcement officers and an armed career criminal, these types of incidents are seemingly commonplace and evoke the sensibilities of all Americans.

The Bureau of Alcohol, Tobacco and Firearms is the law enforcement agency tasked with the responsibility for enforcing the Federal firearms laws and regulations. Let me state that ATF is totally committed to using these laws in the ongoing war on drugs and particularly drug-related firearms violence. Further, we are using the additional weapons provided by the Congress in 1984, with the passage of the Armed Career Criminal Act, to stop the repeat offender who is responsible for the increase in murders, robberies and aggravated assaults.

Unfortunately, the crazed random shooter whose actions can never be rationalized is another problem entirely. Because of the difficulty in pre-identifying these individuals, we must rely on observant and concerned citizens who report to

police changes in behavior of individuals. Tipsters and firearms dealers are also very important, as they alert law enforcement officials when questionable individuals acquire firearms.

Fifteen years ago, police rarely encountered armed drug dealers. Today, it is a different story. Firearms have become status symbols and tools of the trade for drug dealers. The proliferation of quality, high-powered firearms is an ever-increasing problem for law enforcement. This proliferation is fueled by the drug dealers' proclivity towards firearms and their all too apparent propensity for violence. Local crime statistics reflect the increasing use of firearms in drug-related murders and homicides.

Violent incidents involving the killing of police have increased at an alarming level. During 1985 through 1987, 198 law enforcement officials have been killed in the line of duty by firearms.

In September, 1988, a Los Angeles police officer was killed by a suspect armed with an AKS rifle.

In December, 1988, a Dallas, Texas police officer was killed while making an undercover narcotics purchase. The weapon used was a TEC 9, 9 mm pistol.

The illegal trafficking and use of firearms is tied to the growing drug trade, and today's criminal is armed to kill. The weapons



of choice range from the semi-automatic 9 mm pistol to the AR-15 semi-automatic rifle to fully automatic machine guns.

The following incidents are illustrative of the violence and the potential for violence that exists today.

March, 1988- 9 murders occurred at a posse-operated crack house. The weapon used was an AR-15 semi-automatic rifle.

April, 1988- 6 subjects who were part of a heroin trafficking operation were arrested in New York. 50 AR-15 rifles converted to function as machine guns were seized.

May, 1988- ATF agents in Los Angeles executed a search warrant at an alleged drug trafficking location. Prior to being arrested, one suspect fired 15 shots from an AR-15 at the agents.

June, 1988- ATF, DEA and the Houston PD executed a search warrant and recovered a converted MAC 11 with silencer and a converted AR-15 along with 198 kilos of cocaine.

August, 1988- ATF and DEA executed a search warrant and recovered a converted UZI with silencer and 13 kilos of cocaine.

September, 1988- ATF seized an AR 15 and a kilo of cocaine from a Crips gang member in Maryland.

December, 1988- 6 family members were killed in Algona, Iowa, by shots fired from a Mini-14 semi-automatic rifle allegedly purchased through a newspaper ad.

December, 1988- A high school student armed with a MAC 11 type semi-automatic pistol shot 2 teachers, killing one. The pistol had been purchased from a licensed dealer by a relative.

December, 1988- Two suspects were arrested in Arizona in possession of 37 AKS semi-automatic rifles and 450 pounds of marijuana.

January, 1989- A Los Angeles Crips gang member was indicted for the possession of a converted M-11 with silencer that had been used in a robbery and homicide. The subject had two prior felony convictions.

January, 1989- An individual opened fire with an AKS semi-automatic rifle in a California school playground. Five children were killed and 30 wounded.

This last incident involving the AKS-47, semi-automatic rifle has raised a number of questions across the United States. The senseless slaughter of children by a man wielding a sinister military looking weapon causes us to ask not only why but how. We have heard the firearm used in this tragedy described in many ways- assault rifle, para-military weapon, AK-47, AKS 47, AKS, AK47S and so forth. In terms of the Gun Control Act of 1968, as amended, these type of weapons are defined as rifles. The particular weapons in question happen to be "rifles" that function in a semi-automatic mode.

To purchase a semi-automatic rifle, an individual need only certify to a firearms dealer that he is not a felon or a fugitive from justice; not an unlawful user of or addicted to any controlled substance; never been adjudicated as a mental

defective; that he is not an illegal alien; has not been discharged from the Armed Forces under dishonorable conditions and has not renounced his citizenship in the United States. The individual completes this firearms transaction form and is free to receive the firearm unless there is some state prohibition. Only three states currently have waiting periods for purchasing rifles.

The terms "assault rifle" or "para-military" weapons are not defined in Federal law. Generally speaking, "assault rifle" is a label attached by the manufacturer or by some military entity. "Para-military" weapon is a colloquialism that, depending on who is using it, can refer to anything from a firearm painted black or olive drab to a weapon employed by a group that follows a military-like regimen. Usually, it identifies a weapon that has been modeled-at least in appearance-after an already existing military weapon.

AKS is but one of at least eight model designations for the same semi-automatic rifle manufactured in China and imported into the United States. The AKS is a semi-automatic version of the AK-47, standard assault rifle of the Soviet Army since the 1950's. The AK-47 is a select fire weapon capable of firing 600 rounds per minute on full automatic and 40 rounds per minute on semi-automatic. The AKS and the AK-47 are similar in appearance. The AK-47 is an NFA type weapon, having been manufactured as a machine gun. The AKS is difficult to convert, requiring additional parts and some machinery. A firearms expert with the knowledge and aptitude, as well as the additional parts and necessary tools would take about 30 minutes to convert the AKS to fire fully automatic. The AKS is a semi-automatic that, except for

its deadly military appearance, is no different from other semi-automatic rifles. As a matter of fact, the identical firearm with a sport stock is available and, in appearance, no different than other so-called sporting weapons.

There can be little doubt that increased firepower is now more available than ever before. The drug trafficker, the career criminal and the unstable individual-cued by whatever stimulus-are reaching for those firearms that he has seen portrayed in the media as the firearms of his particular ilk.

War movies use the M-16/AK-47 weapons, while other violent criminal movies endorse other types of firearms. Whether the media influences the types of firearms user we have been discussing, or this criminal element has influenced the types of firearms used in the media, can be debated. However, a point that cannot be debated is the fact that we are now, more than ever before, aware of the escalation of firearms-related violence and the increasing potential for firearms-related violence.

JOSEPH R. BIDEN JR. DELAWARE CHAIRMAN  
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 R. J. DUKE SHORT MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON THE JUDICIARY  
 WASHINGTON, DC 20510-6275

February 17, 1989

Mr. Edward Conroy  
 Acting Deputy Associate Director  
 for Law Enforcement  
 Bureau of Alcohol, Tobacco and Firearms  
 1200 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20226

Dear Mr. Conroy:

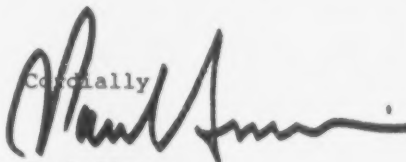
I appreciated the testimony that you provided at the hearing on assault weapons on February 10th.

I have enclosed some follow up questions, and would appreciate your written response at your earliest convenience.

Again, thank you for your testimony and expertise on this matter.

My best wishes.

Sincerely,



Paul Simon  
 Chairman  
 Subcommittee on the Constitution

Enclosure



## SEN. PAUL SIMON'S QUESTIONS FOR BATF

1. Can you tell us if domestic terrorist groups such as "white supremacists" and other hate groups use assault-type weapons and, if so, where do they acquire them?

2. The N.R.A. asserts in their testimony that drug dealers prefer 9 millimeter pistols to AK-47s because the 9 millimeter has more firepower. Does it have more firepower? Are you experiencing problems with violent criminals using AK-47s?

3. It is sometimes stated that law abiding persons buy firearms from licensed dealers while criminals acquire their guns on the street or by theft. Is this true?

4. How easy is it to convert semi-automatics to fire fully automatic--specifically the AK-type weapons; what is your estimate of the number of illegal machine guns in the U.S.?

5. Can you explain why there has been such a dramatic increase in the importation of AK-type semi-automatics from 1986 on?

6. Does it do any good to regulate firearms sales through federal licensees while sales between private parties (persons who are not licensees) remain largely unregulated?



DIRECTOR

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

MAR 22 1989

Honorable Paul Simon  
Chairman, Subcommittee on  
the Constitution  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your letter dated February 17, 1989, requesting a written reply to six firearms-related questions you submitted to the Bureau of Alcohol, Tobacco and Firearms.

We hope the enclosed material is responsive to your inquiry. If we may be of further assistance, please contact us.

Sincerely yours,

*Stephen C. Higgins*  
Director

Enclosures

QUESTION: Can you tell us if domestic terrorist groups such as "white supremacists" and other hate groups use assault-type weapons and where do they acquire them?

ANSWER: During the course of ATF investigations throughout the country on such hate groups as the Aryan Nation, the Order, the Ku Klux Klan, and the Posse Comitatus, we have seen an increased use of what would be classified as assault-type firearms.

In 1985, ATF, along with other Federal, State, and local enforcement agencies, conducted an investigation on the members of the Covenant, the Sword, and the Arm of the Lord in the area of the Arkansas-Missouri border. Subsequent to conducting a raid on the compound, numerous arrests were made and several firearms and explosives were seized. The firearms included numerous machineguns, silencers, and many semiautomatic rifles that could be referred to as assault weapons.

All of these groups have shown a fascination for fully automatic weapons or, in their absence, a fascination toward military-appearing semiautomatic rifles.

QUESTION: The NRA asserts in their testimony that drug dealers prefer 9 millimeter pistols to AK-47's because the 9 millimeter has more firepower. Does it have more firepower? Are you experiencing problems with violent criminals using AK-47's?

ANSWER: The AK-47 and the 9mm pistol are entirely different types of firearms and cannot be compared with respect to "firepower." The version of the AK-47 which has been legally imported into the United States is a semiautomatic rifle which fires a 7.62 x 39mm centerfire rifle cartridge at a muzzle velocity of approximately 2,300 feet per second. The effective range of the AK-47 type rifles is approximately 350 yards. The effective range of 9mm pistols is generally accepted as approximately 50 yards.

The AK-47 type rifles fire far more powerful cartridges than do 9mm pistols.

Nine millimeter pistols are far more concealable than AK-47 type rifles. Most 9mm pistols are approximately 8 to 10 inches in length and generally weigh between 24 and 36 ounces. Nine millimeter pistols generally have magazine capacities of 8 to 17 cartridges.

AK-47 type rifles have an overall length in excess of 34 inches and weigh over 8 pounds. AK-47 type rifles are generally supplied with magazines which hold 30 cartridges.

Law enforcement is being confronted by an alarming trend in violent criminal activity in America whereby the criminal element is "outgunning" law enforcement officers. ATF has observed that violent offenders are using rifles more frequently than in the past because of their firepower, rapid rate of fire, and easy accessibility.

QUESTION: It is sometimes stated that law-abiding persons buy firearms from licensed dealers while criminals acquire their guns on the street or by theft. Is this true?

ANSWER: In actuality, only a small percentage of firearms recovered by ATF turns out to be stolen. During FY-87, ATF seized approximately 8,600 firearms, and only 8 percent were reported stolen. In FY-88, ATF seized 12,900 firearms of which only 5 percent were reported stolen.

ATF has perfected numerous cases on criminals who have used straw purchasers to acquire their firearms. Other typical methods used by the criminal element is to utilize fictitious identification or to simply lie when responding to the questions on the firearms transaction record.

QUESTION: How easy is it to convert semiautomatics to fire fully automatic--specifically the AK-type weapons; what is your estimate of the number of illegal machineguns in the United States?

ANSWER: Most semiautomatic rifles, including the AKS-type firearms, are very difficult to convert to fully automatic because they fire from a closed bolt. Traditionally, semiautomatic weapons that fire from an open bolt have been much easier to convert to fully automatic. This is not to say, however, that AK-type firearms are not being converted to fully automatic. We have encountered conversions that were accomplished through the alteration of existing parts or the interchange of various internal parts.

It would be very difficult and purely speculative to try to estimate the number of illegal machineguns presently in circulation throughout the United States.



QUESTION: Can you explain why there has been such a dramatic increase in the importation of AK-type semiautomatics from 1986 on?

ANSWER: The AK-47 machinegun over the last number of years has become a highly fashionable and popularized firearm in the news media. It is continually visible in newspapers and news broadcasts being carried by various military personnel around the world and different radical groups. It has also become somewhat of a fashion within the movie industry, which has increased its visibility and recognition among the American people. The AK-type semiautomatic firearm in appearance is a very close replica to the AK-47 machinegun and, as a result, has generated a great deal of interest in this country.

QUESTION: Does it do any good to regulate firearms sales through Federal licensees while sales between private parties (persons who are not licensees) remain largely unregulated?

ANSWER: Yes, it does. Federally licensed firearms dealers are generally engaged in large volume sales to many individuals. The private person may be involved in the one-time sale of a collection or the occasional sale of one or two firearms. Most individuals seeking to purchase a firearm will go to a licensed dealer. There are more the 270,000 Federal firearms licensees in the United States. Individuals usually do not seek out the private seller; they may react to an offer for sale.

It is important to note, however, that while there are no recordkeeping requirements for the individual casual sale, the seller is still responsible for ensuring that the person receiving the firearm is not prohibited from possessing that firearm.

Most federally licensed firearms dealers are valuable allies of law enforcement. They keep firearms from known prohibited persons, they aid in tracing firearms and in identifying criminals, and they alert law enforcement when questionable situations arise.

Senator SIMON. The next two witnesses are Daryl F. Gates, the chief of the Los Angeles Police Department, and Sergeant William Pattison, the executive vice president of the National Association of Police Organizations. We are very pleased to have both of you here with us.

Chief Gates, we will call on you first. We will enter your full statement in the record.

**PANEL CONSISTING OF DARYL F. GATES, CHIEF OF POLICE, LOS ANGELES, CA, POLICE DEPARTMENT; AND WILLIAM PATTISON, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS**

**STATEMENT OF DARYL F. GATES**

Mr. GATES. Thank you very much, Mr. Chairman. Thank you for inviting me. Much of what I was going to say has already been said and I don't want to bore you or anyone else with all of those kinds of things.

I would like to talk a little bit about my position on this issue. It is a position that makes me somewhat uncomfortable because it is a differing position than that of a lot of my friends, my friends being very conservative and many in the NRA and many who have aligned themselves with law enforcement in the past. But in my judgment, these weapons have to go.

There is a problem in defining the weapon as an assault weapon. There is no question about it, but it seems to me we are smart enough to do that. And if not, we can define it generically and then we can list those that are assault weapons and those that are hunting or have a legitimate purpose and use.

And I don't have any problem in defining those that are assault weapons, I can tell you, because I have had two police officers killed with assault weapons, one very similar to the one that was held up here, an AR-15. Officer Dan Pratt was killed by an individual in a drive-by shooting; shot at him 15 times and hit him once. That officer would be alive today had he not been confronted with an assault rifle. Another officer, another drive-by shooting, a MAC-10, an automatic pistol, was shot at 17 times and hit 7 times as he was picking up his little boy from a church school.

Los Angeles, as you know, is probably the gang capital of the world, unfortunately, and we find that the gang members love these weapons because in their drive-by shootings and their assaults on other people, they don't have to aim, they don't have to be sportsmen, they don't have to be marksmen.

They just spray, and they have got the fire power to do that spraying and when they spray they hit anyone who happens to be there, and they don't really care. We had 240 gang killings last year—240 in the city of Los Angeles. Sixty percent of those that were killed were not gang members.

I really don't give a damn if they kill one another, but I do object when 60 percent of them are innocent people, not gang members, a little 2-year-old, a 4-year-old—a 4-year-old shot down out in front of his home with his friends by one of these assault weapons.

Now, I don't have any trouble with strengthening our law, Senator Specter; I don't have any trouble with that. And I agree that

some of the legislation that has been sponsored has been great, but you know and I know that Purdy would not have been stopped by any of that legislation, any of those laws. He would not have been kept from getting that weapon.

In the first place, there is no requirement at all that you check a record, none whatsoever. You can just go in and buy the damn thing, and that is what he did and that is what others are doing.

The problem is that we have a proliferation of these weapons; that is the problem. And I cannot see why reasonable people, responsible people, can't understand that. We have an arms race going in the United States.

I heard the President last night and he said cautiously, but optimistically, we were going to do something about the arms race in the world internationally. And here, domestically, we have an arms race going on and we don't want to do anything about it. You don't want to do anything about it; you haven't done anything about it.

My city council finally stood up, my little old city council, 15 members, very close to the people, and they said, hey, we have had it. We don't even know whether we have the power to do this, but we are going to prevent the sale of automatic assault weapons in the city of Los Angeles, and we are going to prevent the possession.

I don't want to do that; I don't want to go for confiscation, but that is where we are going. And those who object to gun control had better pay attention because we in law enforcement are facing up to this every single day and I am getting pretty sick and tired of presenting flags to widows and little kids and trying to explain away why it is we have an arms race in the United States. I support your legislation; I support it fully.

Thank you very much.

[The prepared statement of Mr. Gates follows:]

TESTIMONY REGARDING NEED FOR REGULATION ON  
MILITARY ASSAULT WEAPONS

by

DARYL F. GATES  
Chief of Police  
Los Angeles Police Department

Our nation is confronted by an intolerable and growing threat to the most cherished right of our people--the right to life. That threat is posed by the proliferation of military assault weapons in the hands of criminals and crazies.

On January 17, Patrick Edward Purdy walked onto the crowded grounds of Cleveland Elementary School in Stockton, California, armed with an AK-47 military assault rifle and plenty of ammunition. He then sprayed the crowd of students with gunfire, leaving 5 innocent children dead and 29 others injured.

My Police Department has already lost two officers who were killed by assault weapons. Detective Thomas Williams was murdered in a drive-by ambush shooting by Daniel Jenkins on October 21, 1985. Jenkins, a hardened criminal, was armed with a MAC-10. Officer Daniel Pratt was killed in a drive-by shooting on September 3, 1988. The killer used an AR-15. Kirkton Moore, a violent gang member, is awaiting trial for the murder of Officer Pratt. I do not want any more officers to be spray-gunned to death by street punks armed with high tech killing machines.

I believe such weapons can be, and should be, legislated out of the hands of killers. The most formidable resistance to such legislation has come from those who hold reverent the right to bear arms. Those well-meaning people have in the past rallied in opposition to any proposed legislation that even hinted at gun

control. I would say to those people that I, too, believe in the right to bear arms. I am not a gun control advocate, and I do not believe in general gun control. But recent events have convinced me that we all should stop thinking in terms of "Gun Control" and start doing something about "Gun Responsibility" and a reasonable right to bear arms.

The membership of the NRA is the largest, most vocal group of supporters of the right to bear arms. I believe that most people in that organization are ready to support responsible, restrictive legislation against assault rifles. In California, Ken DeChambeau, a lobbyist for the California Rifle and Pistol Association, which is closely affiliated with the NRA, has been quoted in the Los Angeles Herald Examiner as saying, "I'm willing to consider a compromise. The old rhetoric doesn't apply anymore... I'm willing to sit down with anyone reasonable and discuss ways of doing something. We've got to stop having dead children in our school yards."

I appreciate Mr. DeChambeau's realistic attitude and his honesty. I believe there are many more responsible men and women in pro-gun organizations such as the NRA and the California Rifle and Pistol Association who share those sentiments. With the help of these people, I'm sure that reasonable and workable laws can be passed.

The Second Amendment to the Constitution reads, "A well-regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." We should pay close attention to the words "well-regulated." The Second Amendment gives no more of an absolute right to bear arms than the First Amendment gives anybody the right to yell "Fire!" in a crowded theater.

A reasonable right to bear arms does not mandate that weapons designed and built for the express purpose of killing human beings on battle fields be made available to the general public. In fact, the general public is already prohibited by the National Firearms Act from owning most weapons built for that purpose. Also, the National Firearms Act strictly regulates access to other weapons, such as machine guns. Yet, through an error in judgement, we have allowed assault rifles to flow unrestricted across the counters of our gun shops and into the hands of too many criminals.

It is time to correct that error. Doing so will not be a "foot in the door" for gun control advocates. It will be a courageous and responsible move by reasonable people.

A coalition of criminal justice officials, including myself, began working last November on legislation to prohibit assault weapons in California. That legislation, introduced as California Senate Bill 292 (attached), would do several things. First, it would prohibit the sale, manufacture, and possession of all weapons that fall under a generic definition of "assault weapons," with certain specified exemptions. Next, it would create an Assault Weapons Commission whose task it would be to exempt other firearms when it is found that a particular firearm is a legitimate sports or recreational firearm. Finally, SB 292 would increase prison terms for those found guilty of using assault weapons in the commission of crimes. I strongly endorse this legislation and submit it as a model for similar Federal legislation.



The following additional points should be included in any new Federal legislation:

- 1) The sale and manufacture of firearm magazines capable of holding 20 or more rounds of ammunition should be banned. This ban is necessary to ensure that exempted rifles and pistols aren't outfitted with the same deadly capacity as their outlawed cousins.
- 2) Importing assault weapons should be prohibited. This is a logical step consistent with our own proposed restrictions on the weapons.
- 3) Military assault weapons could be regulated by amending the National Firearms Act.

I urge the Congress to act on this issue--now! I believe that the majority of people who believe in the right to bear arms, as I do, will join with us in making it a reasonable right. Reasonableness means that a demented young man from Stockton cannot purchase an assault rifle across the counter at a local gun store, anywhere.

AK-47s, like the one Patrick Purdy used in Stockton, MAC-10s, like the one used to kill Detective Williams, and AR-15s, like the one used to kill Officer Pratt, are examples of military assault rifles that can be purchased right off the shelf in less than the time it takes to buy a pair of shoes. That ought to be a crime. I urge you to make it just that--A CRIME.

Attachment

## Senate Bill No. 292

## CHAPTER 18

An act to amend Sections 245, 12020.5, 12022, and 12022.5 of, and to add Chapter 2.3 (commencing with Section 12275) to Title 2 of Part 4 of, the Penal Code, relating to weapons.

[Approved by Governor May 24, 1989. Filed with Secretary of State May 24, 1989.]

## LEGISLATIVE COUNSEL'S DIGEST

SB 292, Roberti. Weapons: semiautomatic firearms.

(1) Under existing law, every person who commits an assault upon the person of another with a firearm is guilty of either a felony, punishable by imprisonment in the state prison for 2, 3, or 4 years, or a misdemeanor, punishable by imprisonment in a county jail for a term of not less than 6 months or more than one year.

This bill would make it a felony, punishable by imprisonment in the state prison for 4, 8, or 12 years, for a person to commit an assault upon the person of another with a machinegun or an assault weapon. To the extent that the bill would create a new crime, the bill would impose a state-mandated local program.

(2) Existing law provides that every person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for 4, 6, or 8 years.

This bill would provide that every person who commits an assault with a machinegun or assault weapon upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years. Thus, the bill would create a new crime, thereby imposing a state-mandated local program.

(3) Existing law makes it a misdemeanor to advertise certain weapons or devices, as specified.

This bill would add "assault weapon," as defined, to that list, thus creating a state-mandated local program by expanding the scope of an existing crime.

(4) Existing law imposes an additional prison term of one year for any person who is armed with a firearm in the commission or attempted commission of a felony in addition and consecutive to the punishment prescribed for the felony, unless arming oneself with a

firearm is an element of the offense of which he or she is convicted.

This bill would provide an additional term of 3 years for any person who is armed with an assault weapon in the commission or attempted commission of a felony whether or not the arming is an element of the offense. This additional term would apply to any person who is a principal in the commission or attempted commission of the felony if one or more of the principals is armed with an assault weapon whether or not the person is personally armed with an assault weapon.

(5) Existing law provides that any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to another shall, upon conviction of that felony or attempted felony, receive a full, consecutive sentence enhancement of 5 years in addition to the sentence prescribed for the felony or attempted felony. Existing law also provides that the firearm shall be deemed a nuisance and shall be disposed of by law enforcement officials, as specified.

This bill, in addition, would provide that any person who personally uses an assault weapon in the commission or attempted commission of a felony shall receive the same sentence enhancement. In addition, the bill would require law enforcement officials to dispose of assault weapons, thus increasing their responsibilities, and imposing a state-mandated local program.

(6) The bill also would include legislative findings and declarations concerning assault weapons and would make it a felony punishable by imprisonment in the state prison for 4, 6, or 8 years for any person, as defined, within this state to manufacture or cause to be manufactured, import into the state, keep for sale, offer or expose for sale, give or lend any assault weapon, except as provided by this bill. The bill would make it a misdemeanor or felony for any person to unlawfully possess any assault weapon. Furthermore, any person who commits another crime while violating this provision would be subject to an additional, consecutive punishment of one year for violating the provision in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime. Because the bill would create a new crime, it would impose a state-mandated local program.

(7) The bill also would establish a procedure for the registration of assault weapons by the Department of Justice and issuance of permits for their possession and sale, as specified.

(8) The bill would declare that if any provision is held invalid, that invalidity shall not affect other provisions or applications of the bill.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that for certain costs no reimbursement is required by this act for a specified reason.

However, the bill would provide that, if the Commission on State Mandates determines that this bill contains other costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be payable from the State Mandates Claims Fund.

*The people of the State of California do enact as follows:*

SECTION 1. Section 245 of the Penal Code is amended to read:

245. (a) (1) Every person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison for two, three or four years, or in a county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both such fine and imprisonment.

(2) Every person who commits an assault upon the person of another with a firearm is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail for a term of not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars (\$10,000) and imprisonment.

(3) Every person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Every person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that the victim is a peace officer or fireman engaged in the performance of his or her duties, when such peace officer or fireman is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for three, four, or five years.

(c) (1) Every person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Every person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(d) When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance and it shall be confiscated and disposed of in the manner provided by Section 12028.

(e) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 1.5. Section 12020.5 of the Penal Code is amended to read:

12020.5. It shall be unlawful for any person, firm, corporation, or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of any weapon or device whose possession is prohibited by Section 12020 or 12280.

SEC. 2. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (b) and (c), any person who is armed with a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless such arming is an element of the offense of which he or she was convicted. This additional term shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with a firearm, whether or not such person is personally armed with a firearm.

(2) Except as provided in subdivision (b), and notwithstanding subdivision (c), if the firearm is an assault weapon, as defined in Section 12276, the additional term described in this subdivision shall be three years whether or not the arming is an element of the offense of which he or she was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission or attempted commission of a felony if one or more of the principals is armed with an assault weapon whether or not the person is personally armed with an assault weapon.

(b) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall



order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission or attempted commission of an offense specified in subdivision (b), shall, upon conviction of that offense, be punished by an additional term of one, two, or three years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentencing.

(d) Any person who personally uses a deadly or dangerous weapon in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one year, unless use of a deadly or dangerous weapon is an element of the offense of which he or she was convicted.

When a person is found to have personally used a deadly or dangerous weapon in the commission or attempted commission of a felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (b) or (c) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 3. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivisions (b) and (c), any person who personally uses a firearm in the commission or attempted commission of a felony shall, upon conviction of such felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for two years, unless use of a firearm is an element of the offense of which he or she was convicted.

(b) Notwithstanding subdivision (a), any person who is convicted of a felony or an attempt to commit a felony, including murder or attempted murder, in which that person discharged a firearm at an occupied motor vehicle which caused great bodily injury or death to



the person of another, or any person who personally uses an assault weapon, as specified in Chapter 2.3 (commencing with Section 12275), in the commission or attempted commission of a felony, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the sentence prescribed for the felony or attempted felony, be punished by an additional term of imprisonment in the state prison for five years.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who personally uses a firearm in the commission or attempted commission of a violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall, upon conviction of that offense and in addition and consecutive to the punishment prescribed for the offense of which he or she has been convicted, be punished by an additional term of imprisonment in the state prison for three, four, or five years in the court's discretion. The court shall order the imposition of the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record.

(d) The additional term provided by this section may be imposed in cases of assault with a firearm under paragraph (2) of subdivision (a) of Section 245, or assault with a deadly weapon which is a firearm under Section 245.

(e) When a person is found to have personally used a firearm or an assault weapon in the commission or attempted commission of a felony as provided in this section and the firearm or assault weapon is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(g) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancement provided in subdivision (c) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 4. Chapter 2.3 (commencing with Section 12275) is added to Title 2 of Part 4 of the Penal Code, to read:

#### CHAPTER 2.3. ROBERTI-ROOS ASSAULT WEAPONS CONTROL ACT OF 1989

##### Article 1. General Provisions

12275. This chapter shall be known as the Roberti-Roos Assault Weapons Control Act of 1989.

12275.5. The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. As used in this chapter, "assault weapon" generally means a firearm of such a nature and with such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is, therefore, the intent of the Legislature in enacting this act to place restrictions on the use of these assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

12276. As used in this chapter, "assault weapon" includes any of the following firearms known by trade names:

(a) All of the following specified rifles:

(1) Norinco, Mitchell and Poly Technologies Avtomat Kalashnikovs (all models).

(2) Action Arms Israeli Military Industries UZI and Galil.

(3) Beretta AR-70 (SC-70).

(4) CETME G3.

(5) Colt AR-15 and CAR-15.

(6) Daewoo K-1, K-2, Max 1, and Max 2.

(7) Fabrique Nationale FN/FAL, FN/LAR, and FNC.

(8) FAMAS MAS223.

(9) Heckler & Koch HK-91, H-93, HK-94, and PSG-1.

(10) MAC 10 and MAC 11.

(11) SKS with detachable magazine.

(12) SIG AMT, SIG 500 Series, and SIG PE-57.

(13) Springfield Armory BM59 and SAR-48.

(14) Sterling MK-6 and SAR.

(15) Steyr AUG.

(16) Valmet M62, M71S, and M78.

(17) Armalite AR-180 Carbine.

(18) Bushmaster Assault Rifle (armgun).

(19) Calico M-900 Assault Carbine.

(20) Mandall THE TAC-1 Carbine.

(21) Plainfield Machine Company Carbine.

(22) PJK M-68 Carbine.

(23) Weaver Arm Nighthawk.

(b) All of the following specified pistols:

(1) Action Arms UZI.

(2) Encom MP-9 and MP-45.

(3) MAC 10 and MAC 11.

(4) INTRATEC TEC-9.

(5) Mitchell Arms Spectre Auto.

(6) Sterling MK-7.

- (7) Calico M-900.
- (c) All of the following specified shotguns:
  - (1) Franchi SPAS 12 and LAW 12.
  - (2) Gilbert Equipment Company Striker 12.
  - (3) Encom CM-55.
- (d) Other models by the same manufacturer that are identical to firearms listed in subdivision (a), (b), or (c), except for slight modifications or enhancements, including, but not limited to, a folding or retractable stock; adjustable sight; case deflector for left-handed shooters; shorter barrel; wooden, plastic, or metal stock; larger clip size; different caliber, provided the caliber exceeds .22 rimfire; or bayonet mount.
- (e) Firearms which have been redesigned from, renamed, renumbered, or patterned after one of the listed firearms in subdivision (a), (b), (c), or those described in subdivision (d) regardless of the company of production or distribution, or country of origin, or any firearm which has been manufactured or sold by another company under a licensing agreement to manufacture or sell the identical or nearly identical firearms as those listed in subdivision (a), (b), (c), or those described in subdivision (d), regardless of the company of production or distribution, or the country of origin.

12277. As used in this chapter, "person" means an individual, partnership, corporation, association, or any other group or entity, regardless of how it was created.

## Article 2. Unlawful Activities

12280. (a) Any person who within this state manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon, except as provided by this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison for four, six, or eight years. Any person who, within this state, possesses any assault weapon, except as provided in this chapter, is guilty of a felony, and upon conviction shall be punished by imprisonment in the state prison, or in the county jail, not exceeding one year. Notwithstanding Section 654 or any other provision of law, any person who commits another crime while violating this section may receive an additional, consecutive punishment of one year for violating this section in addition and consecutive to the punishment, including enhancements, which is prescribed for the other crime.

(b) Subdivision (a) does not apply to the sale to, purchase by, or possession of assault weapons by the Department of Justice, police departments, sheriffs' offices, the Department of Corrections, the California Highway Patrol, the California State Police, District Attorneys' Offices, or the military or naval forces of this state or of the United States for use in the discharge of their official duties; nor

shall anything in this chapter prohibit the possession or use of assault weapons by sworn members of these agencies when on duty and the use is within the scope of their duties.

### Article 3. Registration and Permits

12285. (a) Any person who lawfully possesses an assault weapon, as defined in Section 12276, prior to June 1, 1989, shall register the firearm by January 1, 1991, with the Department of Justice pursuant to such procedures as the department may establish. The registration shall contain a description of the firearm that identifies it uniquely, including all identification marks, the full name, address, date of birth, and thumbprint of the owner, and such other information as the department may deem appropriate. The department may charge a fee for registration not to exceed the actual processing costs of the department. After the department establishes fees sufficient to reimburse the department for processing costs, fees charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustment for the department's budget. The State Budget Act shall set a maximum registration fee that the department may charge.

(b) No assault weapon possessed pursuant to this section may be sold or transferred on or after January 1, 1990, to anyone within this state other than to a licensed gun dealer as defined in subdivision (b) of Section 12290. Any person who obtains title to an assault weapon registered under this section by bequest or intestate succession must, within 90 days, either render the weapon permanently inoperable, sell the weapon to a licensed gun dealer, obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230), or remove the weapon from this state.

(c) A person who has registered an assault weapon acquired prior to June 1, 1989, under this section may possess it only under the following conditions unless a permit allowing additional uses is first obtained under Section 12286:

(1) At that person's residence, place of business, or other property owned by that person, or on property owned by another with the owner's express permission.

(2) While on the premises of a target range of a public or private club or organization organized for the purpose of practicing shooting at targets.

(3) While on a target range which holds a regulatory or business license for the purpose of practicing shooting at that target range.

(4) While on the premises of a shooting club which is licensed pursuant to the Fish and Game Code.

(5) While attending any exhibition, display, or educational project which is about firearms and which is sponsored by, conducted under the auspices of, or approved by a law enforcement agency or a

nationally or state recognized entity that fosters proficiency in, or promotes education about, firearms.

(6) While transporting the assault weapon between any of the places mentioned in this subdivision, if the assault weapon is transported as required by Section 12026.1.

(d) No person under the age of 18 years and no person convicted of an offense listed in Section 12021 or 12021.1 of this code or a person described in Section 8100 or 8103 of the Welfare and Institutions Code may register or possess an assault weapon.

12286. (a) Any person that lawfully acquired an assault weapon before June 1, 1989, and wishes to use it in a manner different than specified in subdivision (c) of Section 12285, any person that lawfully acquired an assault weapon between June 1, 1989, and January 1, 1990, and wishes to keep it after January 1, 1990, or any person who wishes to acquire an assault weapon after January 1, 1990, shall first obtain a permit from the Department of Justice in the same manner as specified in Article 3 (commencing with Section 12230).

#### Article 4. Licensed Gun Dealers

12290. (a) Any licensed gun dealer, as defined in subdivision (b), who lawfully possesses an assault weapon pursuant to Section 12285, in addition to the uses allowed in Section 12285, may transport the weapon between dealers or out of the state, display it at any gun show licensed by a state or local governmental entity, sell it to a resident outside the state, or sell it to a person who has been issued a permit pursuant to Section 12286. Any transporting allowed by this section must be done as required by Section 12026.1.

(b) The term "licensed gun dealer," as used in this article means a person who has a federal firearms license, any business license required by a state or local governmental entity, and a seller's permit issued by the Board of Equalization.

SEC. 5. If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 6. The Legislature finds and declares that the weapons enumerated in Section 12276 of the Penal Code are particularly dangerous in the hands of criminals and serve no necessary hunting or sporting purpose for honest citizens. It is the intent, therefor, to ban the weapons enumerated in Section 12276 of the Penal Code and any other models which are only variations of these weapons, which are the same weapon but manufactured or sold by another company under a licensing agreement, or which are new models manufactured or sold by any company with just minor modifications or new model numbers in order to circumvent the prohibitions of Chapter 2.3 (commencing with Section 12275) of Title 2 of Part 4 of



the Penal Code.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Senator SIMON. Thank you, Chief Gates, for a very forthright statement.

Sergeant Pattison.

#### STATEMENT OF WILLIAM PATTISON

Mr. PATTISON. Thank you, sir. Distinguished Senators and staff, my name is William Pattison. I serve as the executive vice president of the National Association of Police Organizations, which represents over 90,000 police officers from Alaska to Florida, from California to New England, on the local, State, and Federal levels. In addition, I am president of the Superior Officers Association, Police Department, County of Nassau.

By way of background, let me say that I started walking a beat 29 years ago in Nassau County. I presently hold the rank of sergeant. Ours is a police family, in that my son is a member of the California State Police.

As you are aware, Nassau County is a bedroom community of the greater metropolitan New York area. Nassau's population is approximately 1.5 million people. Our police force is the ninth largest in the United States, consisting of over 4,000 police officers.

In its first decade of existence NAPO, the National Association of Police Organizations, has had one main goal; namely, to serve as the Nation's advocate for rank-and-file police officers so that their views might be conveyed effectively to Federal lawmakers and officials who enact, administer, and implement Federal laws and policies.

We believe that we have been a useful sounding board to the legislative bodies and the Federal agencies which have the awesome task of determining how life in the United States will be lived.

In our role as advocate we want Congress to know that hundreds of thousands of dedicated police officers in our land have come to recognize the brutal fact that our streets, which we are pledged to patrol and keep safe for our fellow citizens, have become a combat zone in which drug gangs, paramilitary groups, and other criminal elements prey upon the public, armed with assault weapons manufactured at home and abroad for military purposes.

Even suburban Nassau County, which enjoyed a reputation of having a low crime rate, is now being besieged by drugs of all kinds, drug trafficking, and huge supplies of weapons. Our present crime rate is astonishing.

The availability and access to assault weapons by criminals has become so substantial that police forces are now being forced to upgrade the weapons supplied to police officers merely as a matter of self defense and self-preservation.

The 6-shot .38 caliber service revolver is no match against a criminal with a semiautomatic weapon. While it is necessary, we do not believe that improving the weapons provides the police with the solution to the problem of assault weapons.

Instead, we in NAPO are convinced that prompt and decisive action by Congress is required to deal with assault weapons themselves. Therefore, the NAPO executive board has passed on January 31, 1989, a resolution, a copy of which is attached to this statement, which calls for the enactment by Congress of a ban on as-

sault weapons after consultation with law enforcement representatives and other interested groups.

We believe such a ban would be a step in the right direction. It will send a message to the country that we will not permit America to become a shooting gallery or an armed camp, and that we as a nation can reverse the violent course that America is traveling.

We must take the suggestion of our newly-elected President to find ways to become a "gentler and kinder" society. We must end the maiming, the killing of our children, our citizens, and especially our police officers.

We wish to further state, however, that the ban on assault weapons would be but one step on a much larger road that lies ahead in the crime prevention and drug enforcement area.

We have already conveyed to every Member of Congress by a letter dated January 27, 1989, from our president, Robert Scully, our concern over the lack of funding in the area of drug enforcement under the Anti-Drug Abuse Act of 1988.

We wish to clearly state that much more must be done in the areas of law enforcement, employment opportunities, training, education, housing, and the like if this country wishes to avoid the establishment of a large, permanent, threatening underclass of criminals and drug traffickers who will destroy the civil peace and the domestic tranquility that the Founding Fathers sought to establish and maintain on these shores over 200 years ago.

Thank you for this opportunity to express our opinion.

[The text of a resolution passed by the NAPO executive board follows:]

RESOLUTION adopted by the National Executive Board of the National Association of Police Organizations (NAPO) on January 31, 1989, Washington, DC.

As a matter of policy, the National Association of Police Organizations (NAPO) believes that the ready availability of assault weapons constitutes a serious danger to police officers and other members of the public.

THEREFORE, NAPO believes that Congress should carefully consider and enact appropriate legislation to ban such weapons as the AK-47 and other assault weapons after consultation with law enforcement groups and other interested parties.

Senator SIMON. Thank you, Sergeant Pattison, and let me add I particularly like your final sentences there. We have not dealt with the whole problem of the underclass in our society and what you are saying really is true. While this hearing is focused more narrowly, that general statement certainly applies.

Chief Gates, I think you said something that is extremely important; you mentioned having friends who are members of the American Rifle Association. I certainly do, too, and I want to protect the rights of hunters.

But if we let the pendulum swing too far in one direction, inevitably that pendulum is going to swing too far in the other direction. And if those who are friends of hunters and hunting are unwilling to make sensible, sound judgments on semiautomatic weapons, pretty soon the American public is going to make some judgments that may go too far in the other direction, and I think your statement is absolutely sound.

You mentioned that 60 percent of the people who are killed in these gang wars or gang shootings are innocent people. If, instead of these semiautomatic weapons, they had the more conventional arms, would that number of those innocent victims be down appreciably?

Mr. GATES. I don't think there is any question about it. What we are finding in most of our drive-by shootings is that there are multiple shots being fired, rapid-fired shots, and the probability of hitting people is far greater. That is exactly what happened to my officer, 15 shots fired at him, but only hit once.

A heavy probability, had the individual been firing a conventional weapon, a pistol—you know, they are not marksmen; they really aren't. They are bums, they are scum, and if they fired a pistol from a speeding automobile, Dan Pratt would be alive today and he would have been able to see his newborn baby that was born 2 days ago. I am just convinced of that.

So, yes, I am convinced that more people are dying, more people are being shot because of those weapons.

Senator SIMON. And Officer Pratt—there were 15 shots fired, and you mentioned another officer where there were 17 shots.

Mr. GATES. Seventeen shots; he was hit seven times.

Senator SIMON. Yes.

Mr. GATES. Seven times.

Senator SIMON. But how long did it take someone to fire those 15 shots or 17 shots?

Mr. GATES. It was from a speeding car just going right by him as fast as the car could go and firing that weapon all the way, just a matter of seconds. That is what we are dealing with.

You know, as you mentioned, my friends are hunters, they are NRA members. I don't want to take their guns away from them. I want to protect that right, but they are the first ones that if you were talking about the rights under the fourth amendment, the fifth amendment, the sixth amendment—if you were talking about a decision of the U.S. Supreme Court that affected any of those rights in a direction that they felt was unreasonable, they would be jumping up and saying, my God, you have gone too far; you can't let the criminal have all those rights.

But in this case, when it comes to the second amendment, they don't want any interference, and we have got to provide and we already have provided—I mean, when you talk about a right to bear arms, they don't have a right to bear arms in every respect. They don't have grenade launchers.

I have an ex-Marine that wrote to me—and he is a member of the NRA—after he wrote to the president of the NRA, and he said, you know, I had an M-60 when I was in the Marines; I loved that weapon for military use, and I am against the assault rifles.

I think more and more of these individuals are coming around. They are recognizing that we have gone too far, just as we went too far with narcotics and dangerous drugs and failed to do anything about it, and the proliferation hit us and now we are dying as a Nation because of it.

Senator SIMON. Sergeant Pattison, you talked about the police, and let me address this question to both of you. We ask police officers to get out and risk their lives in order to protect us. We do

that every day around this Capitol; we do it where you come from and where you come from.

Are your police officers in greater jeopardy today than they were 5 years ago, 10 years ago, because of these semiautomatic weapons?

Mr. PATTISON. Absolutely, Senator, absolutely. It is just being proliferated so badly. In fact, our drug task force was just equipped with automatic machineguns the other night. That is how bad it is getting. They will not go into the street because they don't even have a chance with the weaponry the bad guys have.

The good guys should have the best, but we don't have the best. We want to have the best. So, since Congress has passed the drug bill it should also get the money funded so that we can really do the job that we are supposed to do. You can't do it without the weapons.

Senator SIMON. Chief Gates.

Mr. GATES. My answer is precisely the same. I am very, very close to my police officers, and clearly they are in jeopardy. We have not gone to this type of weapon, but I am telling you this, that if this continues I am going to make those kinds of changes and you will see my police officers walking around with H and K semiautomatic weapons, or maybe automatic weapons.

I started SWAT. I was the originator of SWAT, and I did it for a specific purpose. Now, SWAT has proliferated across this Nation and into the world, and I did it for a specific purpose and that was to control these kinds of situations. And now they are totally out of control and everybody has to be a SWAT member now, and that is crazy. Where are we going in the United States? It doesn't make any sense.

We need to do something about it, and it is time that we got together, all of us—Senator Specter, all of us—and say, hey, look, we don't want this proliferation; let us see if there isn't something we can do. Let us see if we can keep them away from the criminals; let us see if we can find some ways to do that.

But we can't if we keep importing them by—and I think it was 80,000, not 40,000, Senator, of the AK-47's coming in.

Mr. PATTISON. Senator, a lot of the police officers are members of the NRA, but if you ask them, everyone will tell you there is no legitimate reason for one of these being on the street for a law-abiding citizen. Everyone of them will give you the same answer.

Senator SIMON. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Chief Gates, let me thank you at the outset for your cooperation. My chief counsel, Steve Hilton, and Margaret Morton were in Los Angeles talking to your deputy chief, Robert Vernon, on the gang issue. We are trying to put together some legislation on these issues.

Mr. GATES. Good.

Senator SPECTER. When you said that you were—I believe you said that you were opposed to confiscation of these weapons. Did I understand you correctly on that?

Mr. GATES. That is correct.

Senator SPECTER. Why so?

Mr. GATES. Well, you know, I believe that what we need is a way of those people who have them—I don't want to go out and take



them away from them unless they are criminals. If they are criminals, yes, I want to take them away from them. If they have got them, let us identify them, make sure that they are not criminals, and that is a hard thing to do.

They may not be criminals, but they may be crazy and some of the problems of getting at their medical records are very, very difficult. You know, that right to privacy is not balanced with responsibility.

But if we can show that they are law-abiding people and they have a gun, fine. Give them a permit for that gun and for that individual, but make it illegal to continue to sell these weapons. At least we begin to cut down on the sale of these weapons; we cut down on the proliferation of these weapons. Somewhere, sometime maybe we will get over where we are right now, but I don't believe in confiscation.

Senator SPECTER. Well, I was just trying to find the distinction between accessibility from purchase as opposed to confiscation. If we can determine that somebody is a criminal, then we have, as Mr. Conroy testified, a disabling provision so that they cannot acquire them.

You talk about medical records——

Mr. GATES. But they can. What says they can't? You know, in the State of California we have a 15-day waiting period. You wouldn't pass a 7-day waiting period nationally, but in the State of California we have a 15-day waiting period for handguns, handguns only.

And our Department of Justice can barely do the job of identification of the purchasers of handguns now, and they really don't do a real good job of that in 15 days. There is no waiting period for these kind of weapons. You can walk in off the street; if you have got the money, you can buy them like you can buy a pair of shoes. So what is disabling about being a criminal?

Senator SPECTER. And your State 15-day waiting period does not apply; it applies only to handguns and not to weapons of this type?

Mr. GATES. Right, just the handguns.

Senator SPECTER. Just to handguns?

Mr. GATES. Right.

Senator SPECTER. When you talk about deranged peoples' medical records, they certainly are confidential. But where there are court records, where there are adjudications which raise a judicial conclusion of mental illness, do you see any problem from a civil libertarian point of view in prohibiting those people from having access to weapons?

Mr. GATES. Well, I know the civil libertarians will see some problems with it, but I think they ought to be prevented. In California, we thought we had a law that said that if an individual who is incapacitated mentally and that we put them away for an observation period—we have an observation period of 72 hours—if we do that, if we find that they can be placed under observation for that period of time and they have possession of a weapon, we can take that away from them and in order to get it back, they have to go to court.

Well, our civil libertarians have said, no, no, you can't do that. If that person is not found to be mentally incapacitated, he can get

his gun back. I am resisting that. Even though the court has said I have to give him his gun back, I am not going to give him his gun back; that is all there is to it. Particularly if it is an assault rifle, he is not going to get it back until he sues me.

Senator SPECTER. After there is a judicial determination of incapacity or mental illness or perhaps insanity, then do you see any problem in limiting the opportunity for possessing guns?

Mr. GATES. Well, I am not sure about that judicial determination is proof, and I think there lies a big——

Senator SPECTER. Well, it may not be proof, but it is conclusive.

Mr. GATES. It is conclusive, I agree, but there lies part of our problem in allowing these weapons to proliferate, and I think it is a good indication that we ought to do our very, very best to stop the sale of these weapons.

Senator SPECTER. Chief Gates, are you familiar with Purdy's criminal record?

Mr. GATES. You just indicated his criminal record was a series of misdemeanors.

Senator SPECTER. Well, they are more than misdemeanors. There are felonies here. They were plea-bargained down. In your experience, I am sure you find, as we all have, that there is inordinate plea bargaining and people walk out of court with a conviction on a lesser offense and a slap on the wrist or probation where there are very serious charges involved that ought to carry a conviction for a more serious offense and a jail sentence. Would you agree with that?

Mr. GATES. Well, Senator, you know, I don't believe in plea bargains, but you as an ex-prosecutor know that there are situations where the only thing you can do is plea bargain.

I know our President when he was the Vice President was hit with that question over and over again with Noriega: Would you plea bargain, would you go along with a plea bargain.

Well, you don't know whether you have got a case. You may have a case that is going to go or it is not going to go, and the only way it is going to go is if you plea bargain. You know that as a prosecutor. I don't believe in them at all.

Senator SPECTER. No, I don't know that as a prosecutor.

Mr. GATES. Sure, you do.

Senator SPECTER. No, no, I don't.

Mr. GATES. Sure, you do.

Senator SPECTER. No, I don't, and let me tell you why. You seem to think you know what I know and you may not.

Mr. GATES. If you are a prosecutor, you know that. I am a police officer. You have got 30 years, I have got 40 years, and I can tell you that there are cases you plea bargain because that is the only way you are going to go forward with them, and you know it. That is the only way you are going to go.

Senator SPECTER. Well, that is not so.

Mr. GATES. All right.

Senator SPECTER. I will stack my 30 years against your 40 years. The fact of the matter is that plea bargaining in this country is an epidemic, and time after time after time there is evidence at hand of a serious felony and the prosecutor doesn't have sufficient personnel and the lists are clogged and the judge wants to adjourn. A



deal is made for a misdemeanor or for a lighter offense and there is probation, and that is what happens.

Don't tell me about General Noriega when you are talking about plea bargaining in the American judicial system. General Noriega doesn't have a thing to do with it. I wouldn't plea bargain with General Noriega either.

There are some rare cases where if somebody gives you evidence of somebody farther up the chair, there will be a consideration of leniency, which might be said to be a form of plea bargaining.

Or there might be a case where I have had witnesses that I couldn't find and the case is going to be dismissed for failure to prosecute and I will take a probationary period, but that is not plea bargaining in America.

Plea bargaining in America involves the kind of case that Purdy was involved in on October 1 when he was charged with attempted robbery and criminal conspiracy and he pleaded to a misdemeanor, being an accessory, and served 30 days in jail. That is plea bargaining in America.

Mr. GATES. It may be, it may not. I don't know the facts and neither do you. We ought to take a look at the facts and see whether or not there was evidence to support a conviction. And if there isn't total evidence to support a conviction, you plea bargain and you get what you can get.

I agree with you. I am not for plea bargaining; I am opposed to it and I wouldn't—

Senator SPECTER. If there is not evidence to support a conviction, the person ought not to have been arrested.

Mr. GATES. Oh, now, come on. [Laughter.]

Senator SPECTER. No, no; you come on. Now, wait a minute. Are you arresting people where there is no evidence to support a conviction?

Mr. GATES. Senator, we arrest people that are not filed upon all the time in the United States. Ask the sergeant here; it happens all the time. We have evidence. We don't have to have evidence to convict the individual to arrest them and you know that.

We have evidence to arrest them, and we do it and then we do our very best to present evidence to convict them.

Senator SPECTER. Chief Gates, you know a lot of things that I don't know, apparently. When I was district attorney, I said the police could not arrest someone if they didn't have evidence to convict them.

Mr. GATES. To convict them?

Senator SPECTER. That is right.

Mr. GATES. Oh, come on. I don't believe that.

Senator SPECTER. Your main argument is "oh, come on." We are sort of off the subject here, but the fact is—

Mr. GATES. It says reasonable cause to believe that the person has committed a felony.

Senator SIMON. The Chair is going to intervene.

Mr. GATES. That is all the law requires. Reasonable cause to believe that a person has committed a felony gives you the opportunity to arrest the individual, and that is what the law is, Senator, Mr. District Attorney.

Senator SIMON. The Chair is going to intervene at this point in this very enlightening discussion. [Laughter.]

We are operating under the 10-minute rule on questioning.

Senator Metzenbaum.

Senator METZENBAUM. Chief Gates, in order that we not lose sight of what this bill is all about, if you eliminated all the plea bargains in this country, all of them, would the AK-47 and other semiautomatic assault weapons continue to be a problem?

Mr. GATES. Well, sure. You know, that is the problem and what is so troubling for me because here I get in an argument with a guy that I know is probably more aligned with my philosophy than yours and you, Senator. [Laughter.]

And it troubles me. On this one issue, this is a difficult issue, I know, for everyone, but the answer is all the plea bargains in the world isn't going to change that. Those weapons have to be abolished. We cannot continue this proliferation, this arms race that is going on.

The sergeant doesn't want to be armed with automatic weapons. I don't want my people to be armed with automatic weapons, but they are not going to be on the street without them; we are not going to be on the street without them. I am not going to let my guys on the street without them.

So, where are we going to go with this thing? We are a civil police force, not a military force. Do you want us to be like Colombia where everybody is armed with automatic weapons? Everybody gets shot down there.

Senator METZENBAUM. If the police officers all have semiautomatic weapons and the drug dealers all have semiautomatic weapons—

Mr. GATES. That is where we are going.

Senator METZENBAUM [continuing]. How many more civilians are going to lose their lives?

Mr. GATES. And they are going to say, we had better have the automatic weapons. That is what they are saying now. We ought to have the automatic weapons; we have got to protect ourselves. Well, that is a lousy gun to protect yourself with, anyway. I would just tell them that.

Senator METZENBAUM. Sergeant Pattison, do you believe that these assault weapons have any legitimate sporting use?

Mr. PATTISON. I don't believe so, Senator. I am not a hunter, but as I said to Senator Simon before, you ask any police officer in this country if there is a legitimate reason for somebody to own one of these. Let them tell us. I don't see any reason.

Senator METZENBAUM. Chief Gates, as you know, there is a provision in our bill that has to do with the banning of large magazines. Would you want to address yourself as to why you feel that that is important?

Mr. GATES. The magazines?

Senator METZENBAUM. Yes.

Mr. GATES. Well, because there are semiautomatic weapons now that are legitimate hunting weapons that can be fitted with a magazine of 20 rounds. I don't want to ban the weapon because it is a legitimate hunting weapon.

Senator METZENBAUM. I understand.

Mr. GATES. But you have to ban magazines that supply that number of rounds. Otherwise, you have got an assault rifle.

Senator METZENBAUM. Chief Gates, I want to thank you for coming out here today. I know you generally support the right of law-abiding citizens to own guns, and that makes your opposition to these assault weapons all the more valuable.

Frankly, I hope we can pass a bill controlling these weapons so that you or any police chief in this country does not have to lose any more officers to these high-tech killing machines.

Sergeant Pattison, I want to thank you. We worked together before. The support of the law enforcement community is very important. Without it, we could not have passed some of the legislation that we have heretofore passed in this area, and I am pleased to have the privilege of working together with you in this instance. Thank you, sir.

Mr. PATTISON. Thank you, sir, and we would like to thank you for the efforts that you continue to put in in behalf of the police officers in this country. We won't forget you.

Senator METZENBAUM. Thank you.

Senator SIMON. Let me just add my thanks to both witnesses. Too often, we get witnesses that just kind of dance around the edges of a subject. [Laughter.]

You didn't, and I appreciate it.

Senator SPECTER.

Senator SPECTER. My first round was up when we were on reasonable cause to arrest, Chief Gates.

Mr. GATES. Sorry.

Senator SPECTER. I don't want to unduly prolong that aspect of the conversation because we have another bill here and very serious considerations, but we are really dealing with a web. You pick up a part of it and you get a lot of it.

It is true that a police officer can't make the final determination when he makes an arrest as to whether there is sufficient evidence to convict. When the matter goes to the sergeant or whoever reviews it—we used to have assistant DA's do it—then the matter is either held for further action or he is dismissed, and you don't expect every police officer to be a Supreme Court Justice and be able to make all those evaluations.

The business of plea bargaining and the inability of our criminal justice system to deal with serious crime is the biggest problem, in my judgment, today on the problem of violent crime.

I don't care what you pick. That, from my experience, is the biggest problem, where we have evidence against people and we ought to go forward and for one reason or another they don't. It is an accommodation to the system for lack of resources or laziness or one thing or another and people are not prosecuted. Then even when they are, and sentenced, there is not sufficient jail space for them.

There might have been a number of ways to stop Purdy from doing what he did. Perhaps Senator Metzenbaum's bill would have been one of them, but another way would have been to have had him in jail.

And it is true, I don't know the details of these facts. I think we ought to know the details of Purdy's facts and I am going to find

out about them to get right into the nitty-gritty as to what went on.

I don't want to let this hearing close without a very strong statement on the necessity for a stronger criminal justice system that really works on the available evidence and moves forward to trials and convictions and appropriate sentencing and appropriate jailing.

Mr. GATES. Senator Specter, once again, I apologize for any discussion that was unnecessary there. Your thinking and my thinking are probably more closely aligned, as I told the other two Senators. Philosophically, we are probably much closer, and I agree totally with you, and I am sure the sergeant does.

Your career criminal statute is a good one and it has been used effectively in Los Angeles. I don't disagree with anything you have said, except I am afraid you are not in support of doing something with the automatic rifles.

Senator SPECTER. I have not taken a position on the bill, Chief Gates. I am here to hear the testimony.

Mr. GATES. Well, except I have heard that coming from the NRA and I am afraid—I really wish we could get together on this thing.

Senator SPECTER. You had better start naming names. I haven't told anybody anywhere, including the NRA—

Mr. GATES. I kind of read some of the same things coming from the NRA and some of the hate mail I have gotten lately on this stand I have been taking. Let me just say I just hope we can—conservatives, liberals; I think it is a nonpartisan issue. I really do, and the police of America are pleading with you. I mean, we are pleading with you. My guys are pleading with you. We need something done, we really do, and we are asking you to get it done.

Senator SPECTER. I have been working with your guys for 30 of your 40 years.

Mr. GATES. Good; let us work some more. Thanks very much.

Senator SIMON. We thank you both for your testimony.

Mr. PATTISON. Thank you, Senator.

Senator SIMON. Our next panel is Lori Mackey, a teacher at Cleveland Elementary School in Stockton, CA; John F. Hanlon, attorney at law, Fort Lauderdale, FL; and Bill Press, who is a commentator with KABC-TV in Los Angeles.

I don't mean any disrespect to any of the other witnesses, but, Ms. Mackey, we are particularly appreciative of your being here.

Ms. MACKEY. Thank you.

Senator SIMON. Let us start off with your testimony.

**PANEL CONSISTING OF LORI MACKEY, TEACHER, CLEVELAND ELEMENTARY SCHOOL, STOCKTON, CA; JOHN F. HANLON, JR., ATTORNEY, FORT LAUDERDALE, FL; AND BILL PRESS, NEWS COMMENTATOR, LOS ANGELES, CA**

#### **STATEMENT OF LORI MACKEY**

Ms. MACKEY. First off, I would like to thank you very much for inviting me to be here. I think it is very important that the world knows that the tragedy that happened at Cleveland School didn't just happen on January 17. It happened that day and is continuing to be a tragedy at our school. Our lives have been changed forever, and that is what I am hoping to get across today.



On January 17, 1989, at 11:43 a.m., 400 children were playing during their recess. Four to five minutes later, 5 children were dead, 29 children and one teacher were wounded. Now, 23 days later, three are still hospitalized with gunshot wounds.

Until that day, recess was a time of carefree play for those children and school was a safe place to come and learn. Today, children at Cleveland School still go out for recess, but now they look at each passerby with suspicion and fear. My students are disconcerted every time the door to my classroom unexpectedly opens. They won't return to their work until I have assured them that the person at the door poses no threat. There are patched bullet holes in our building, a reminder to these children and me every day how vulnerable we are every time we gather to work, study, or play.

I would like to tell you the story of what happened that day. At 11:35 a.m., the intermediate children were in their classrooms for academic instruction. The primary students were outside enjoying the sunshine, innocently playing during their recess. My class had begun a math lesson along with five hearing students who had just joined us. It appeared to be a normal day.

At approximately 11:43, our lives were to be changed forever. A young man, Patrick Purdy, parked his old green station wagon just outside of our campus on the back street. He ignited a long fuse to a homemade pipe bomb to blow up his own car. Then he entered the campus through a back gate, walked up the walkway toward our portable building, crossed behind the building to the back corner of our room, faced the playground and began shooting at the primary children with an AK-47, a semiautomatic weapon.

At that time, I was with a majority of the children up at the front of the room. I heard the shots and quickly assessed them to be firecrackers. Shortly after the onset of the popping sounds, I heard a more intense explosion. I thought that someone had tied several fireworks together in a bundle and they had exploded in unison.

But as the sounds continued, I immediately got up and walked to the door. Looking out the window, I saw to my left, approximately 5 to 6 feet away, a young Caucasian male dressed in army fatigues who was holding a large weapon at his hip facing the play yard making wide sweeps with the gun. The intense sound pierced my ears.

The look on the man's face was of deep concentration. He didn't look angry or pleased, just determined—determined to hurt and kill innocent children at play. That look is one that I will remember for the rest of my life.

I turned toward the direction of the playground, and out of the adjoining window I could see the pandemonium that was occurring. Children were scattering in every direction and I could hear the screams from where I stood.

I continued my turn toward the children in my class and I immediately instructed them to get down and crawl to the back of the room under the safety of a large table. I prayed that he wouldn't see us. Maybe in his craziness he would just assume that we were out for recess as well.



Under the table, the children and I shuttered with each rapid shot. I grabbed the telephone to phone the office and when they answered I begged them to call the police, telling the person on the other end that a man with a gun was outside of our room.

After a minute or so, the shots stopped and we were terrified that he would enter the classrooms to do additional damage. As we lay still, we saw his shadow through our four windows on the back wall. He walked past the back of our room. His journey to the other side seemed to have him moving at a snail's pace.

On the east side of our building, he resumed his attack. He began shooting from this new position, again toward the playground. I immediately stood up to lock the door. Apparently, he wasn't satisfied with his "accomplishments" and he once again traveled back to our side of the building to fire additional rounds.

The children were terrified. As I looked at the children, the thought that I would never see any of them again entered my mind. Soon, the shots ceased and for the last time we watched him walk to the east side.

At that point, we heard one isolated shot and then there was silence. Had he entered one of the other classrooms? Had he taken any of the children hostage? Was he returning to our side?

The silence was as deafening as the gun fire. For 20 minutes or so, we sat in that silence. What was happening? Finally, a police officer came to the door and told us to stay hidden. He indicated that the gunman had been shot, but there was a possibility of a second suspect. Were there enough officers on the campus to stop a second crazy man with a weapon powerful enough to kill and injure scores of people in a matter of seconds?

The realization of what had happened, combined with the new fear of a second gunman, grabbed me. Tears started to fall. I couldn't be strong any longer. I can't explain the thousands of thoughts that went through my mind in those 20 minutes or so.

What had any of these precious children done to deserve such hell? What had any of us done to be devastated so terribly? How could one man with one weapon do so much damage to so many people?

While we lay there patiently awaiting our destiny, I could hear helicopters and sirens all around us. As I peered out the windows, I could see paramedics loading the children on the stretchers and administering medical attention as needed. Police and paramedics were everywhere. What kind of damage had this man done?

After approximately 20 minutes more, the police officers came to our door once again. They escorted us into an interior hallway where we were to wait for further directions. On the long journey across the playground, it was unavoidable for us not to see the bodies of three of the dead children lying on the ground covered with white sheets.

The children wanted to know what had happened, but all I could tell them was that I didn't know and that we shouldn't look. How could they be subjected to these inexplicable deaths at such a young age? How could I ever find the words to explain that children from their own school were lying before them dead from the gun of a single man?

Since January 17, the lives of so many people have been drastically changed, not only in the population at Cleveland Elementary School, but the entire community, in our State, our Nation, and in the world.

The evidence of the impact is in the more than 500 letters that have poured into our school daily since that fatal day. Children from across the Nation have written to express their sympathy and to say that they, too, are afraid to go to school now.

We have heard from high school students whose concern over this incident has prompted letters from them to their Congressmen and Senators. They wondered how a civilized society could allow anyone to purchase a weapon that can cause such terrible devastation.

Parents have written of the fear that I, my family and friends, and the people in the educational community face. How can we protect our children who \*are so vulnerable from such a senseless act?

My students have demonstrated fearful behavior which was not apparent prior to the shooting. Their parents come to me daily with reports that their children are afraid to be in their bedrooms alone, afraid to sleep without a light on, and afraid of any stranger that they encounter. Nightmares are regular occurrences; anger rears its head for no obvious reason.

And these are the effects on children who saw just the shadow of that gunman. They did not hear the gunshots, as they are deaf, but only felt the vibrations of each round. They did not see their playmates fall to the ground around them. The children that were outside when the massacre occurred are faced with even greater devastation.

Personally, my life has been changed forever. In a matter of 5 short minutes, I am a different person. I will never look at things again in the same manner. Prior to my encounter with Patrick Purdy, I was a very trusting person. I looked at all people and saw good. Now, I look at each and every stranger with fear and suspicion. I jump at each loud noise and cringe at each siren. My school, which has always been a peaceful haven for me, is now a place of fear and uneasiness.

I once was able to sit in my classroom, both before and after school, for great lengths of time to work on lesson plans and bulletin boards or to meet with parents. Now, it is too frightening for me to be in the room alone. I enter the room with the students and exist with them, also.

I worry that my effectiveness as a teacher will diminish, but I can't find the strength to overcome my fears. I am not alone. These anxieties and fears live in each and every one of us at Cleveland School.

All of this alteration and destruction of lives was the result of one person, Patrick Purdy, who was able to plan the aggressive act, go to a store and purchase a semiautomatic weapon for the sole purpose of killing a large number of innocent human beings—in this case, children.

It is quite obvious that his intent was not to kill merely 5 and wound 30 individuals. On his chest he wore a weapons pack that was filled with more than 300 additional rounds.

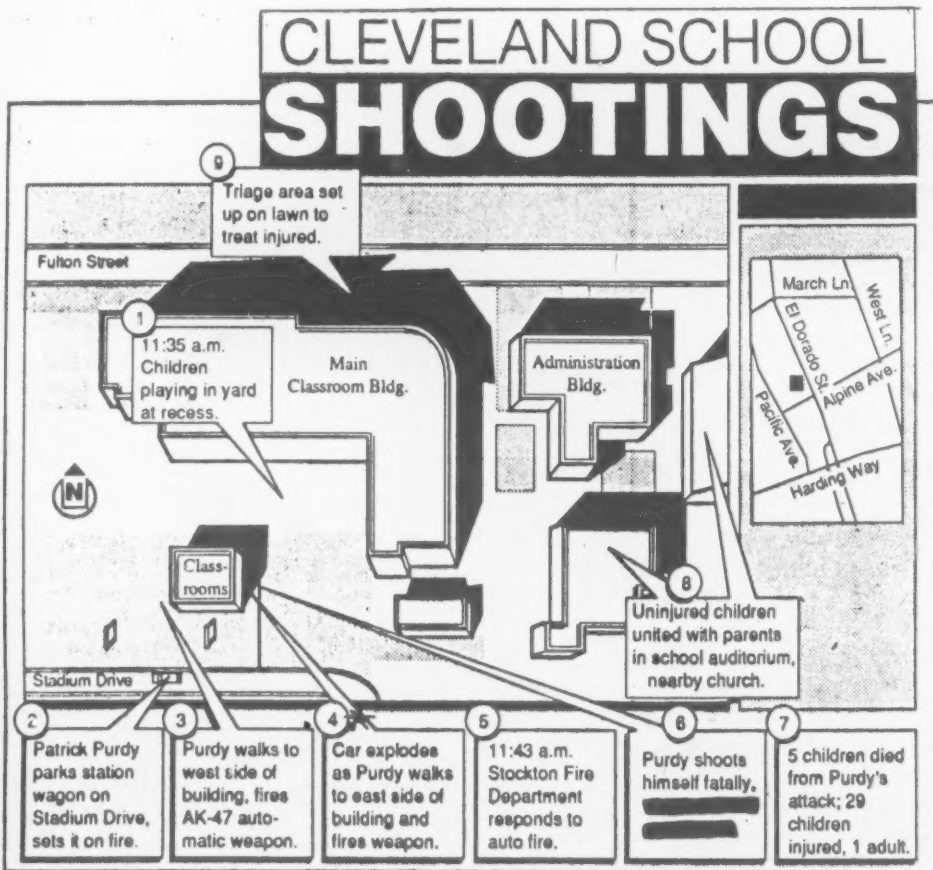
The teachers and staff that were present at the time of the shooting were quick to react and risked their own lives to save the lives of these innocent children. Yet, why should we or any other person be placed in this position? We can't build a wall around us to protect ourselves from this kind of cold, calculating murderer. Why aren't there laws to protect us from this kind of madness? Why are these semiautomatic weapons even allowed to be produced and sold to anyone who has the money to pay for them?

Only Congress has the power to pass a comprehensive law which will protect all citizens from a person who would purchase one of these weapons in one State and then travel to another to wreak havoc.

Does it always have to take a tragedy of this magnitude to get any action? We at Cleveland School and the rest of the country want to know, has there been enough suffering to warrant action now?

Thank you.

[A graphic description of the shooting at Cleveland Elementary School follows:]



\* Purdy returns to West Side of building then returns to East Side. Record graphic by MICHAEL JANTZE

Senator SIMON. Ms. Mackey, we thank you for your willingness to come, and your courage, and I hope by your being here we can prevent this kind of senseless and needless tragedy elsewhere in the Nation.

Mr. Hanlon.

Senator SPECTER. May I just make a statement, Mr. Chairman?

I want to express my appreciation for your testimony. It is very, very strong, something that could only be given by someone who was there and who has been so deeply affected by it. So, thank you.

Ms. MACKEY. Thank you.

Senator SIMON. Mr. Hanlon.

#### STATEMENT OF JOHN F. HANLON, JR.

Mr. HANLON. Thank you, Mr. Chairman. Members of the subcommittee, as you know, in my previously submitted remarks, I indicated I spent 24 years with the FBI, retiring in November 1987. I am in the private practice of law and will join the Broward County State attorney's office on March 1 as a prosecutor.

I prepared my remarks and when I submitted them, I said I was flattered that you would ask me to come and address you, and I really didn't feel that I could tell you anything you didn't already know.

After listening to your witnesses and to yourselves, I am more convinced of that fact, and I can't tell you how impressed I am by Mrs. Mackey's courage to come forward and relate what happened. What I can tell you is what it is like to go through one of these things. That is something I can tell you, and you don't ever forget it. And to hear Mrs. Mackey sit here so calmly and tell you, I can't tell you how impressed I am by her bravery.

I worked in Miami for 8 years, from the Mariels on up until my retirement, on what has now come to be called the Violent Crime Squad. We were charged with the responsibility of investigating bank robbery, kidnap, extortion matters, and unlawful flight fugitives.

And I can tell you quite honestly, in talking to the 15 fellows or so that were on the squad, that we knew prior to April 11, 1986, that somebody on the squad was going to get hurt.

And I am departing from my prepared remarks because I think I can tell you some things you haven't heard before.

Ben Grogan, 2 days before he died, told me—I was preparing a kidnapping and a bank robbery case for trial, and Ben Grogan said, when we find these guys there won't be any trial, and it was a very prophetic remark.

From October 1985 up until April 11, 1986, there were a series of extremely violent bank robbery-armored car robberies that were singular in nature due to the violence involved.

These fellows would use stolen cars and they would kill the driver in order to get the car—totally unnecessary. One man survived. He was shot at point-blank range out in the Everglades. These fellows, the two suspects, Michael Lee Platt and William Russell Matix, would go out in the Everglades on a weekly basis and shoot up 1,500 rounds of ammunition. They had a military background; these fellows were ready to go.



They killed one man for his car. They shot the other man three times. He survived, walked out of the Everglades. They shot an armored car guard in one instance. In another instance, one of them shot an armored car guard and when he fell down, the other guy walked up behind him and put two slugs in his buttocks and blew his guts out as he lay on the ground.

On April 11, the only reason we were out there was on a total hunch, on the chance—they were robbing along South Dixie Highway in the Kendall section, and with nothing to indicate that we would stumble on to these fellows except the fact that they would rob on a Friday morning.

So, Gordy McNeill, who wanted so much to be here to address you today, suggested that we go down and, in the vernacular, stake out some banks. So a team of us went down there.

At 9 o'clock, I was behind Ben Grogan and Jerry Dove in a car at 135th Street and South Dixie Highway. They turned north. I proceeded behind them with a fellow by the name of Eddie Mireles, who you will hear more about—Edmundo Mireles.

I pulled into my location. The minute I did, Ben Grogan spotted the black Monte Carlo which was stolen from the man who walked out of the Everglades. We followed them. It became obvious that they recognized that we were in the area. Ben and Jerry were in front of me; I was behind them with Eddie.

We saw to our right the back of a strip shopping center. There were residences to our left and we knew that we had to move. We could see the passenger was loading up a long weapon. The idea was to stop them there and if there was going to be shooting, we would be shooting up against the back of this concrete wall.

I slammed into them, they slammed into me. The passenger came over the seat with the long gun. I didn't see it. Another agent slammed him and it was quite a scene. I totaled an automobile up against the back of the building.

When I rolled out of the car, I heard a tremendous explosion and I looked some 30 yards to my left and Ben Grogan was out of his car standing up alone shooting at these two fellows who had crashed under a tree.

I felt Eddie Mireles go. I lost my big gun in the wreck. I had a second gun on my ankle, a 5-shot .38. I grabbed that, and I didn't want Ben Grogan to be by himself. I ran across the street. Eddie Mireles ran across the street.

I didn't see what happened to him, but in the course of the shooting Eddie Mireles took a .223 round from the Ruger Mini 14 through his arm and it about blew his arm off. It took 2 inches of bone, muscle and everything, knocked him down in the middle of the street.

At that end of the car, there was Gordy McNeill. Gordy got shot in the head, he got shot in the hand, and as he tried to go for his shotgun, got shot down through the shoulder, again with the .223 from the Ruger Mini 14, and was left paralyzed, laying in the middle of the street.

Gordy McNeill looks like a million dollars, as you would expect an FBI agent to look, but he cannot feel a thing from his chest down to this day. Eddie Mireles' arm is well nigh useless after re-



constructive surgery. He is down at Quantico now. Both those fellows are still on the rolls.

After Platt, who was firing the Mini 14, finished with them, I had taken up a position behind Grogan's car. Grogan was to my left and Jerry Dove—I didn't see him until he died.

I had emptied my pistol at Matix, who was still in the car, and I went down behind the car to reload and at that time I got shot through the fingers into the back arm and into the thigh. The blood geyser down the back of my arm. It reminded me of Wiley Coyote—the crazy things that go through your mind.

I threw my left hand over my arm to stop the bleeding to keep from bleeding to death, and I looked and by that time Platt had come up to the car. So, I pushed myself on my back around. I had gotten shot in the head, also. I came around the other side of the car. And when I got to the other side, I was on my back.

I looked up. Platt stood between my legs with a Mini 14 and shot me in the groin, which was the sixth time. I went over on my side. I heard Ben Grogan die. He went, "oh, my God," and died at my feet. I heard his death rattle; I heard his breath escape from him.

Jerry Dove, a young guy, 3 years on the job, fell right next to me. He was laying right next to me. I was staring right at the side of his head. He tried to raise his head and the guy shot him in the back of the head. When he fell back down, he had a hole in the back of his head.

The man stood over me, firing out into the street. He had been shot nine times, but he was still going. He was firing out into the street. The brass—I will never forget it. The brass—and as fast he could trigger that gun and, honest to God, I thought at the time it was automatic—all the brass and stuff fell down on my head and my chest and was tinkling in the street.

He then got in the car and tried to back it up. Eddie Mireles somehow—and all I can say, as I indicated in my remarks, miraculously and courageously got up off the ground, walked up to the car and finished them off, three into Platt, three into Matix.

A day doesn't go by I don't think about it. The interesting thing about it—and much ado was made of what we did, and accolades and whatever. And when Director Webster came down, I told him, and I mean this sincerely, I don't think there is a law enforcement man alive who saw our situation who wouldn't have tried to get across 82d Avenue to help us.

But I also think that we did what we are expected to do as law enforcement officers. Hopefully, you never have to do it, and I felt that we did our duty. That is what you folks pay us to do.

And I contrast our situation. It was our profession; we were professionals. That is what we are supposed to do; that is our duty. And I contrast the situation in Stockton, CA. It is pathetic.

I am sick to death of the National Rifle Association and its right to bear arms. I felt that way before the shooting. It is nonsense. I was reading in the Post yesterday that \$6 million was spent by the National Rifle Association in their lobbying efforts. I would think that money could be put to tremendous use in Stockton, CA, to help those kids put their lives back together.

We talk about confiscation of weapons. Take the weapons. If you don't take them through legislation, the thieves do. Ninety percent

of the weapons used in the homicides committed in the United States last year were stolen. It is nonsense. These people don't need it, you know. Curt Gowdy doesn't need it. It is a great ad. He doesn't need that.

So, I can only tell you, gentlemen, that I really appreciate what you are trying to do. You are going to save lives; there is no question about it. Think of enhanced penalties. I was delighted to hear Senator Specter's comments and what he is trying to do. Think of enhanced penalties for people that are arrested in possession of these guns; mandatory minimum sentences.

It is very simple; we don't have to fool around. Mandatory minimum sentences if you are caught with one; give them 10, 15 years. It gets their attention on the street. It gets the boys' attention on the street.

Thank you so very much.

[The prepared statement of Mr. Hanlon follows:]

TESTIMONY OF JOHN F. HANLON, JR.

Before the Senate Judiciary Committee  
Subcommittee on the Constitution,  
Dirksen Senate Office Building,  
Washington, D.C., February 10, 1989

Mr. Chairman, Members of the Subcommittee:

By way of introduction, I am John F. Hanlon, Jr., currently engaged in the private practice of law in Fort Lauderdale, Florida and soon to join the staff of the Florida State Attorney in Broward County, Florida as a prosecutor. Subsequent to my graduation from the Georgetown University Law Centre, I was employed by the U.S. Department of Justice, Federal Bureau of Investigation. During my Bureau career, from August, 1963 until November, 1987, I served in seven field divisions, and at F.B.I. Headquarters and held Special Agent Investigator, Supervisory and Executive positions.

On April 11, 1986, at Miami, Florida, I took part in what has been characterized as "the bloodiest day in FBI history." On that day, certain members of the C-1 Squad, the team charged with the responsibility of investigating bank robbery, kidnapping and fugitive matters, happened onto two heavily armed bank/armored car robbery suspects. These two, one armed with a twelve gauge shotgun and a 357 Magnum revolver and the other a Ruger Mini 14 Assault Rifle with 30 round "banana" clips of ammunition and a 357 Magnum revolver were suspected of committing a number of bank/armored car robberies characterized by ever escalating violence. During two of the robberies, guards were shot. One of the guards was shot twice as he laid on the ground, critically wounded. A third individual was killed and his automobile stolen. A fourth was shot several times at point blank range and his car stolen. Fortunately, this man survived. Before the investigation was completed, the two, William Russell Matix and Michael Lee Platt, were believed responsible for the deaths of seven people, including two FBI agents.

During the course of the shoot-out which lasted approximately four minutes, Platt, the man armed with the Ruger Mini 14 fired 45 shots, 42 of them with the assault rifle. It was he, armed as he was, who killed the two agents and injured the others. During the course of the shoot-out, Supervisory Special Agent (SSA), Gordon McNeill was wounded in the hand and head and left paralyzed in the street from a shot down through his shoulder and into his back, with fragments lodged against his spine. SSA McNeill who can walk, has no feeling from his chest down. Special Agent Edmundo Mireles was shot through the left arm, two inches of bone, muscle and tendons were blown away and he has been left with an almost useless arm. These two brave men are still on duty with the FBI. I was shot in the head, in the right hand and fingers, and suffered numerous fragment hits in the right arm and thigh. While trying to stem the flow of blood gushing from my right arm, I watched Platt stand between my legs and shoot me in the groin at point blank range. He then killed Agent Ben Grogen who fell at my feet. I heard his death rattle. He then shot Agent Jerry Dove who fell right next to me with his head some six inches from my face. Platt then shot him in the back of the head, execution style. Platt stood over me firing into the street. I thought his weapon was on full automatic due to the repidity of fire. Shell casings fell on my head and chest. Two other agents were injured slightly. Platt and Matix then got into the Bureau vehicle and attempted to flee. Agent Mireles so seriously wounded earlier, miraculously and courageously got up off the ground, walked up to the car and emptied his revolver into the two of them, thus ending the fight. Fortunately, Matix only fired four shots, one from the shotgun and three from his handgun. Had he been similarly armed as Platt, with an assault rifle and was as active, none of us would have survived the carnage that day.

As you might imagine, there was much made of our actions on that day. We received numerous awards for bravery, and much favorable comment from the media and the public. All of this is fine and very much appreciated. However, it must be remembered that as law enforcement officers we were merely doing our job, the job we signed on for and the job the public has a right to expect. We did our duty, plain and simple and that is all.

While I am certainly flattered that my views have been sought on such an important piece of gun control legislation as that restricting the sale of assault type weapons, I really do not believe that I can tell this distinguished panel anything that they do not already know. Simply put, the United States of America, supposedly the most civilized nation in the industrialized world, has become through the proliferation of weaponry of all kinds and calibers as well as the spread of cheap, addicting drugs, an extremely violent and an extremely dangerous place in which to live and work.

In 1983, the Superintendent of Police for the City of Chicago, told a panel made up of ABC newsmen, including David Brinkley, George Will and the ever popular Sam Donaldson "We are an international disgrace when it comes to firearm violence." I felt this way even before the shoot-out in April, 1986.

The topic of gun control has been studied and studied and studied. Northeastern University in Boston, after a statistical study, found that strict gun control legislation cuts down on the utilization of guns during the commissions of crimes, including homicides. The Attorney General's Task Force Report on Violent Crime issued in 1981 found that crimes committed by armed individuals represented a severe problem of violence in this nation. The Task Force noted the ineffectiveness of federal legislation brought about by breakdowns in enforcement and



unintended loopholes in the laws and called for broad, sweeping legislation.

Now we find ourselves in 1989 with ever increasing bloodshed and terror brought about by easy access to weapons. A month ago, in Dade County, Florida, a policeman in pursuit of an automobile had his cruiser sprayed with automatic weapons fire from an AK-47 assault rifle. In Stockton, California, a lunatic with a criminal background, armed with an assault rifle, killed a number of school children at play in a fusillade of bullets. What a tragic picture.

In the face of this, the gun lobby, lead by the National Rifle Association, probably the most powerful lobby in the United States, inundates us with a much different picture - a picture of a man, his boy and a dog, clad in camouflage hunting gear, walking through fields of newly fallen snow with long guns over their shoulders. This may be fine, but does the father and his son need an assault weapon, an AK-47, an M-16, a Ruger Mini 14 or a Mac-10 machine gun with 30 round "banana" clips of armour piercing bullets to "bag" a quail? I think not! Can a man and his son obtain such weapons, weapons that have no legitimate use? Certainly. Can the drug crazed career criminal obtain one? Certainly. All they need to do is walk into any gun store and find row after row after row. Platt did this when he walked into a Miami gun store ten (10) days before the shooting and bought the Ruger Mini 14 and 5000 rounds of ammunition. If he couldn't buy one, he could steal one out of a house, a car or a business establishment. Does the man and his boy have an absolute right to own or possess such weapons under the Second Amendment to the U.S. Constitution? Of course not. To argue otherwise is practically and legally laughable.

Gentlemen, the effective control of weapons is needed and needed now more than ever. The people want it. The states alone cannot do this effectively. The federal government can and should, if it is willing, to take a tough stance against the gun lobby. Legislation restricting the sale of assault type weapons, weapons that have no legitimate use, is at least a step. Possibly this step can lead to sweeping gun control legislation which is concise, understandable and most importantly, effective. Such legislation would not only save thousands of lives, but would make America a safer place in which to live.

Thank you.

Senator SIMON. We thank you, Mr. Hanlon. I wish you and Mrs. Mackey could be testifying not just to the three of us, but I wish you were on the floor of the U.S. Senate speaking to every one of my colleagues. I think your stories are powerful.

Mr. Press.

Senator METZENBAUM. May I just make a comment?

The subcommittee had invited Agent McNeill, who is still with the FBI and who was injured in the same shootout with Mr. Hanlon. We had also agreed that Mr. McNeill would not be asked about his views on legislation, only his experience as a law enforcement agent.

Unfortunately, the department has taken the position that he could not testify if he were to be on the same panel with his former colleague and fellow agent. And I must say that I don't quite understand the FBI's position on that. Obviously, Mr. McNeill more than paid his dues.

And I have spoken directly with Director Sessions myself about it. I know that the other agent was very willing to be here with us. I am sorry that he can't, but I want to say to you, Mr. Hanlon, and to you, Mrs. Mackey, I have been here about 13 years; I don't think I have ever heard anything more powerful than the testimony of each of you, or more moving or more of concern to me as a loving grandfather.

Mr. HANLON. Thank you, Senator. I would like to say, in defense of my former associates, I believe it was a departmental decision rather than at headquarters. And I had my differences with the bureaucracy over there, but I believe it was a departmental decision.

Senator METZENBAUM. I think you are right, departmental meaning the Department of Justice.

Mr. HANLON. Right.

Senator METZENBAUM. I think you are right and I stand corrected. I think you are absolutely right on that.

Mr. HANLON. One of your assistants asked me—there was some question about the rapidity of fire of the weapon, semiautomatic over automatic, and the 30-round clips that Platt had. I found out later the weapon was semiautomatic and it takes about 10 seconds to shoot—of course, as fast as you trigger it, it will discharge. On full automatic, that clip will empty in about 3 seconds.

Senator METZENBAUM. Were you equipped with a similar kind of weaponry?

Mr. HANLON. Yes, sir, and there has been considerable question about that, that the Bureau was outgunned on that day. There were SWAT-trained fellows on the team. Of course, I am not, and wasn't and didn't want to be.

There were SWAT-trained people there with 9-mm pistols, with .357 revolvers. There were two MP-5 semiautomatic and automatic weaponry in possession of two of the agents who were not in a position to come to the scene when we had to move.

So, there is no question in my mind, and it is not party line, that we had the weaponry there. Unfortunately, when we had to make our move, we were spread out over about a 9- or 10-block area and couldn't get into position.

And I would say the reason we had to move is all they had to do was go down one block, take a right-hand turn, and they would

have been back on one of the busiest streets in south Florida. And we knew there was going to be an extremely violent confrontation and we felt if we didn't stop them there, they would get up on the highway and that many, many innocent people would have been hurt.

Fortunately, in this incident, there were like 140 shots fired, 42 of them out of Platt's Ruger, and fortunately nobody was hurt other than the guys whose job it is to do it, and fortunately we killed those two.

Senator SPECTER. Mr. Hanlon, I would also like to say that your testimony is just overpowering. I have seen somewhat similar situations in the law enforcement arena, but nothing quite as gripping as what you have testified to.

I hope that many Americans will see you on television, as that is possible is here, to appreciate what law enforcement officials do, to understand what more has to be done by way of resources.

The war against crime can be won, the war against drugs can be won if there are sufficient resources, and law enforcement officers and prosecutors and courts and jail to do it.

Mr. HANLON. I sincerely believe that, Senator. And, of course, you fellows have got to lead it, and I feel very good that you are sitting there, and I believe you mean what you say.

Senator SIMON. If I may just add a note in connection with Senator Metzenbaum's statement, whether it was Judge Sessions or Attorney General Dick Thornburgh who made the decision that Officer McNeill cannot testify here today, it was a wrong decision and I hope that message will reach the powers that be.

Mr. HANLON. Mr. McNeill very, very much wanted to be here, as did Edmundo Mireles, who saved our necks that day, and I echo their views.

Senator SIMON. Mr. Press.

#### STATEMENT OF BILL PRESS

Mr. PRESS. Thank you, Mr. Chairman. I believe the compelling testimony of Ms. Mackey and Mr. Hanlon underscore the importance of this legislation. I am honored to be on the panel with them to make three very brief, but I hope helpful points.

One is that California is really under siege from these military assault rifles. Second, we need Federal legislation to ban such weapons nationwide. And, third, and the reason I am particularly here, we believe this issue is too important for the media to remain on the sidelines.

These weapons may have been designed for use on the battlefield, but it is not soldiers on the battlefield today who are their targets; it is the innocent and unarmed men, women, and children of American cities.

Starting long before the Stockton schoolyard tragedy, Chief Gates has outlined how many people have been killed in the streets of Los Angeles in gang warfare using these weapons in the last year.

The killings go on, Senators. January 28, little 2-year-old Philip Fisher was shot and killed by an UZI fired from a passing car. He just happened to be out in his front yard playing. His uncle just

happened to pick him up and was holding him in his arms when this car rushed by, sprayed the yard, and this little 2-year-old was killed.

No matter where you live in California, rich or poor, in any community, people are living in fear of their lives. We can't even depend on the cops anymore because, and they are the first to admit it, in too many cases the gangs and the criminals are better armed than the cops.

We are aware of that problem. The public is aware of it, the police are aware of it, our elected officials are aware of it. I think we are doing as much as we can. This week, the city of Los Angeles, the city of Stockton, the city of Compton passed the toughest possible city-wide bans on semiautomatic assault rifles.

We have legislation in Sacramento that Police Chief Daryl Gates is working on, and Senator David Roberti and Assemblyman Mike Roos, which we believe will pass, it has a good chance of passing, to make this ban statewide.

But, frankly, Senators, a California ban on semiautomatic assault rifles is of limited value as long as people can still import them, as long as people can buy them through mail order catalogs, or as long as people can go across a State line and buy one in Reno, NV, or Flagstaff, AZ.

So, California needs and other States need the kind of umbrella protection that only Federal legislation can provide. So we are counting on you, Senators. We are also counting on our local and State elected officials, but we also know the tremendous political pressure that you are going to get from the National Rifle Association and from individual gun owners who are opposed to any restrictions on the ownership of guns.

Normally, this is a battle that the media would stay out of, but the reason I am sitting here today, and I am not back there or over there where I normally would be, is to make the point that this battle is too critical, too many innocent lives are on the line, for us in the media to remain silent.

When the safety of our streets and our cities is at stake, we in the media can no longer be mere spectators. Freedom of the press implies responsibility of the press, and today it is our responsibility, using all the powerful means that we have available, and we have a lot of them—talk shows, editorials, commentary, town forums, opinion pages—it is our responsibility both to inform the public of the danger posed by these assault rifles and to help build support for getting rid of them.

We applaud you for crawling out on the limb, but we don't think it is fair to leave you out on the limb alone. At my stations, KABC Radio and KABC-TV, we are trying to involve the public in this issue in many different ways, through editorials—like an editorial, Senator, I have submitted for the record by George Green, who is general manager of our radio station; in many hours of radio talk shows where we have informed listeners and urged them to get involved on either side of this issue; through our public affairs programming and our consumer affairs programming where we tell people they just can't sit still, they have to get involved, they have to write a letter, they have to take a stand. We have received thousands and thousands of letters.



Finally, we have involved the public in this issue through our daily commentary. We are working every day with the Los Angeles Police Department. Every time there is an incident using a semi-automatic assault rifle in the city of Los Angeles, we report it on the news and we ask people to write to the State legislature to ban these weapons.

We have asked people to submit one good reason for owning these weapons. So far, Senators, we have not received one.

Here are just some of the letters that I received this week on this issue. I will just pick the top two to show you. They range from the expected—this is Steve Armstrong from Los Angeles, who writes, "You can have my gun when you pry it from my cold, dead fingers"—the expected to the unexpected.

This is John Angel, who is from Fort Irwin, California: "Dear Mr. Press, I have watched you for years and do not agree with you 95 percent of the time. As a 23-year member of the U.S. Army and an avid gun collector and user, this time I am on your side. There is no reason for anyone to own a military assault rifle—none." So, that is the range of the public opinion that we have received, Senator.

Just in conclusion, I want to thank you for this opportunity to testify. We hope you will pick up where the cities of Los Angeles and Stockton and Compton have left off and extend this ban nationwide. Frankly, we don't feel we in the media will be doing our job if we are not out there supporting you.

Thank you.

[The prepared statement of Mr. Press follows:]

Statement of Bill Press, News Commentator  
KABC-TV and KABC Radio, Los Angeles  
Before the Sub-Committee on the Constitution  
of the United States Judiciary Committee  
February 10, 1989

Mr. Chairman, Members of the Committee:

My name is Bill Press. I am a news commentator in Los Angeles for KABC-TV and KABC Radio. I am honored to have a moment on your agenda this morning to make three brief but important points:

- One. California is under seige from military assault rifles.
- Two. We desperately need federal legislation outlawing private possession and use of such weapons.
- Three. This issue is too important for the media to stay on the sidelines.

1. California Under Seige

Semi-automatic assault rifles were designed for the battlefield. But it's not the soldiers on the battlefield who are their targets today. It's the men and women and children of California cities. Starting long before the Stockton schoolyard tragedy.

From the Los Angeles Times comes this list of 36 people killed - and many more critically wounded - in the streets of Los Angeles by assault rifles between January 30, 1988 and January 21, 1989. And the killings go on. On the evening of January 28, two-year old Philip Fisher was shot and killed by an UZI fired from a passing car. His uncle just happened to be in the frontyard, holding the little toddler in his arms.

Citizens of California are living in fear. No matter what community we live in, we fear for our lives. We can't even depend on the police anymore - they are the first ones to admit it - because, too often, the criminals and the gangs are better armed than the cops.

2. Need for Federal Legislation

The public recognizes this problem. The police recognize this problem. Our elected officials recognize this problem - and we are doing everything we can to solve it. This week, the cities of

Stockton, Compton and Los Angeles enacted the toughest possible citywide bans on semi-automatic weapons. In Sacramento, Senator David Roberti and Assemblyman Mike Roos - with the help of Police Chief Daryl Gates and Sheriff Sherman Block - are pushing urgency legislation to extend the ban statewide.

Because we're so much under the gun, literally, I don't think any state is doing as much as California, but we are the first to recognize - we cannot do it alone. A California ban on the sale, possession and use of semi-automatic assault rifles will be of limited value, as long as those same guns can be purchased by mail or purchased just across the state line, in Reno or Flagstaff. California and other states desperately need the kind of umbrella protection against semi-automatic weapons that only federal legislation can provide.

### 3. Role of the Media

We are counting on you, Senators. We are counting on our local and state elected officials. But we also know the tremendous political pressure you will feel from gunowners opposed to restrictions on semi-automatics.

Normally, this is a battle the media would stay out of - except to report the news. But this battle is too critical, too many innocent lives are on the line, for us in the media to remain silent. When the safety of our streets and cities is at stake, we can no longer be mere spectators. Freedom of the press implies responsibility of the press. And today, it is our responsibility - using all the powerful means we have at our disposal: talk shows; editorials; commentary; town forums; opinion pages - it is our responsibility both to inform the public of the dangers to society posed by military assault rifles and to help build support for getting rid of them. It is not fair, Mr. Chairman, for us to leave you out on the limb - alone. At KABC-TV and KABC Radio, we have tried to exercise our responsibility in several ways.

First, in editorials supporting a ban on semi-automatic weapons, like this editorial by KABC General Manager George Green.

Second, in many hours of radio talk shows dedicated to exposing both

sides of the issue and urging listeners to get involved.

Third, and more directly, by our television public service feature called "Seven on YOur Side": where reporter Henry Alfaro asked viewers to get busy, take a stand and write letters. We've received some 3000 letters in one week. They run the range.

From the expected. John Adams of Huntington Beach writes: "I am against any kind of gun control." To the defiant: Michael O'Neill asserts: "I support the right of every American to own a semi-automatic weapon. These weapons in the hands of honest civilians serve as no threat to any other human."

To the unexpected. Ralph Beattie of Tarzana: "I am a life member of the NRA and the California Rifle and Pistol Association. Over the years, I have owned many rifles, pistols and shotguns, which I used while a licensed hunter and marshmanship participant. But I am strongly against the availability of military attack weapons to the general public and see no purpose in them for a sportsman, hunter or marksman."

Granted, it is no scientific survey. But, as some indication of the public stands on this issue: those 3,000 letters are running two-to-one in support of banning military assault rifles. Fourth and finally, KABC TV and Radio have supported a ban on semi-automatic weapons in our commentary. With the cooperation of the Los Angeles Police Department, informing viewers every time an assault rifle is used in a crime. And, every day since the Stockton shooting three weeks ago, challenging viewers to provide one good reason for private ownership of an AK-47 or UZI. We've received hundreds of letters. And hundreds of reasons. Empty reasons you've heard before. Like: "I need it for hunting deer." Or: "The Second Amendment guarantees me the right to own any gun I want." Or: "I need it to protect my family." Lots of empty reasons. Not one good reason so far. Because there is no good reason. The only reason for owning an AK-47 is to kill people the owner doesn't like.

In conclusion. Thank you again, Mr. Chairman and Members, for this opportunity to testify on this all-important issue. We hope you will pick up where the cities of Los Angeles, Compton and Stockton left off - and make the ban on semi-automatic assault rifles nationwide. It is a goal so critical to the safety of our communities, that if we in the media fail to support you in your efforts, we will not be doing our job.

Thank you.



# EDITORIAL

Editorials on topics of public interest are presented regularly on KABC Talkradio 79 by George Green, Vice President and General Manager. KABC offers free broadcast time to qualified persons with opposing views. Your comments concerning these editorials will be greatly appreciated.

Saventy Ann Lee, Editorial Director

## KABC TALKRADIO AM 790

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### MASSACRE IN STOCKTON

In Stockton last Tuesday, a disturbed drifter named Patrick Edward Purdy aimed a powerful assault rifle at a schoolyard of children, and in a matter of minutes killed five youngsters, wounded 29 others plus a teacher and took his own life.

The weapon he used was an AKM-47 semiautomatic rifle which can be easily converted to fully automatic. It is, plain and simple, a military weapon, yet Purdy was able to pick it up over the counter at a store in Oregon. He could have done the same here in California. All he had to do was state on paper that he was not a felon or mentally defective, and the gun was his, right there on the spot. No waiting period. No investigation of his background. Nothing.

KABC says it's way past time that our lawmakers had the guts to stand up to the powerful gun lobbyists and place some meaningful restrictions on the sale of these weapons. Right now, State Senator David Roberci is working on legislation to accomplish that, but he will need a lot of help. What we plan to do is let you know more about his bill as it progresses and also tell you which lawmakers are standing in its way. It will then be up to you to write letters, make phone calls and bring pressure to bear on those people. Gun advocates have a lot of clout, but so do the rest of us if we're willing to make a lot of noise.

The right to bear arms does not mean the right to bear machine guns. That is just ridiculous. Five innocent children have died. And KABC says the legislature (and Congress too) should make darn sure they did not die in vain.

(Broadcast on Jan. 20 at 7:57am, 10:57am, 4:57pm, 10:57pm)

AK-47's

TITLE OF COMMENTARY

AEC

(ABC OR KGO)

1-18-89

(DATE)

TEXT OF COMMENTARY

Five times in 1988, gunmen barged onto school campuses, opened fire and killed schoolkids

Yesterday was the first such tragedy of 1989. But won't be the last ... until we get rid of the guns

In fact, a few more tragedies like this, Congress won't even have to debate gun control anymore. The people of this country will storm the Capitol and demand it. Beginning with an absolute ban on private purchase and possession of semi-automatic weapons. Controls, of course, the National Rifle Association still stubbornly - and stupidly opposes.

First, to set the record straight. Automatic weapons - machine guns - are illegal. Have been since 1934. But there are no limits, as Harold Greene proved today, on semi-automatic weapons like Uzi's or AK-47's - which can be converted into automatic weapons in twenty minutes.

You can buy them in any state. Or you can go into any other state and buy one. Even here in California, because of the opposition of the NRA and the cowardice of our State Legislature, even here in California, it's easier to buy an AK-47 than a handgun.

No permit required. No fee to pay. No waiting period. No FBI check.

No wonder a nutso, convicted felon like Patrick West can walk into a gunshop a sick man and walk out a mass-murderer. What insanity! What an outrage!

And I'm not the only one who thinks so. Police Chief Daryl Gates: "Machine guns and semi-automatic weapons should be outlawed. I don't want that gun on the street."

Five time last year. And now five poor little kids dead in a Stockton schoolyard.

Frankly, I'm sick of the killings. I'm sick of the NRA. I'm sick of anybody who supports them. And I'm sick of the spineless politicians afraid to vote against them.

So, I end this commentary with a challenge. To anybody watching this news. To write or call me here at Channel 7 - I'll even read your answers on the air - tell me why letting anybody who wants to buy an AK-47 is a good thing for democracy.

Give me five reasons. Give me four. Give me three. Give me two.

I defy you. Betcha can't even come up with one!

Senator SIMON. Thank you.

Just a couple of comments, and unfortunately time is starting to be a bit of a problem here. One is, you mentioned about urging State legislative action, but the reality is Mr. Purdy bought that gun in the State of Oregon.

Mr. PRESS. In the State of Oregon.

Senator SIMON. And we are going to have to have national legislation to deal with this problem; there is just no question about it.

Second, I would simply like to underscore what Ms. Mackey has said, not simply for Cleveland School. We are harming kids all over this Nation in terms of exposing them to violence on our television and in other ways.

One of the observations I have made is if I talk to, say, a Rotary Club, I may get a question on nuclear war; it is not likely. If I talk to a college audience, it is more likely. If you talk to a high school class, you probably will get a question. Talk to a group of fourth-graders and half the questions will be about nuclear war.

We are exposing our young people to violence in ways that just cannot do anything but harm their future. And, you know, what has happened at Cleveland is obviously tragic, not only for those who were the casualties, but for the others. But it is much more than one school.

Senator Specter.

Senator SPECTER. I think that these witnesses have produced very important testimony—Mrs. Mackey's personal experiences, Mr. Hanlon's personal experience. And I commend Mr. Press for jumping into the center of it. It is nice to see you here.

Mr. PRESS. Thank you, Senator.

Senator SPECTER. Mr. Chairman, in light of the lateness of the hour and the additional witnesses we have, I think I will limit my questions to those.

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. I have no questions. I just want to again say how grateful I am to Ms. Mackey for accepting our invitation to join us here, and Mr. Hanlon. And Bill Press, I am glad to see you again.

Mr. PRESS. Thank you, Senator.

Senator METZENBAUM. I know you thought at one time about joining us. It didn't come to pass, but it is nice to have you here today.

Mr. PRESS. One of these days, Senator. Thank you.

Senator SIMON. Let me just say I concur with Senator Metzenbaum. I don't mean this disrespectfully to you, Mr. Press, but I am sure you understand.

Mr. PRESS. I understand, Senator. I share your sentiments.

Senator SIMON. I don't remember ever having two more powerful witnesses, Mrs. Mackey and Mr. Hanlon, than the two of you, and I am grateful to both of you.

Mr. HANLON. Thank you so much, Mr. Chairman.

Ms. MACKEY. Thank you.

Senator SIMON. Thank you.

Ms. MACKEY. Thank you for having us.

Senator SIMON. Our final panel: Mr. John M. Snyder, the public affairs director of the Citizens Committee for the Right to Keep

and Bear Arms; Mr. James Jay Baker, the director of federal affairs for the National Rifle Association of America, its Institute for Legislative Affairs; and Mr. Neal Knox, the executive director of the Firearms Coalition.

Mr. Snyder.

**PANEL CONSISTING OF JOHN M. SNYDER, PUBLIC AFFAIRS DIRECTOR, CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS; JAMES JAY BAKER, DIRECTOR, FEDERAL AFFAIRS, NATIONAL RIFLE ASSOCIATION, INSTITUTE FOR LEGISLATIVE ACTION; AND NEAL KNOX, EXECUTIVE DIRECTOR, THE FIREARMS COALITION**

#### **STATEMENT OF JOHN M. SNYDER**

Mr. SNYDER. Thank you, Mr. Chairman. A lot has been said today about the horrid tragedy in Stockton and other places, and I could not concur more with the fact that this is a horrid tragedy.

I think, however, along with Senator Specter perhaps, that it reflects a breakdown in our criminal justice system, and it is my opinion that this should not result in an attack on firearms, per se, or certain kinds of firearms, per se, or on the right of law-abiding citizens—that is, people who had nothing ever to do with anything like the Stockton tragedy or anything like it—to keep and bear arms, even certain kinds of firearms.

I would also like to align myself with those comments regarding the necessity for a reform of the plea bargaining system, and I would like to offer as the major thrust of my testimony this morning—and, of course, you have all of my testimony before you—a proposal for a reform of the plea bargaining system, one that would accomplish this without chopping up the rights of American citizens who own guns who had nothing to do with the Stockton tragedy or anything like it.

I hope that this body will consider this proposal as part of a general legislative initiative and a reform of the plea bargaining system at the Federal and State levels to strike at the heart of the real cause for the Stockton tragedy.

Not only would this initiative strike at the heart of the Stockton shooting and similar incidents; it also meshes, or would mesh, with recently enacted legislation to curb criminal violence.

We call for a reform of the plea bargaining system which would require a person charged with a violent felony to bargain with the criminal justice system over sentencing, but not over the charge.

Under this proposal, the violent criminal suspect would have to plead guilty to the felony charge unless it were dropped by prosecutors or he went to trial. Any bargaining in which the suspect and the legal system engaged would have to be over the length of the sentence, even probation. But someone who wanted simply to evade a felony record would not be able to do so.

Underlining this proposal is the fact that Patrick Edward Purdy, who shot the Stockton elementary school children, would have been prohibited from buying any kind of firearm under existing Federal and California law if he had not been allowed to plead down from a robbery charge in Woodland, CA, in 1984.

Purdy, as has already been pointed out, reportedly had a long criminal record and even had attempted suicide while in police custody, but had no record of felony convictions. That is one of the reasons he was able to elude the intent of Federal firearms laws when buying a semiautomatic rifle in Oregon, and why he was able to purchase handguns in California, despite that State's present 15-day waiting period and criminal record check.

As I point out in my testimony, at least two spokesmen for major national police organizations, the American Federation of Police and the National Association of Chiefs of Police, already have endorsed this proposal in place of an attack on the right of citizens to own firearms, per se, including the semiautomatic weapons under discussion here this morning.

Mr. Chairman, there already are Federal and State laws prohibiting violent felons from acquiring firearms. Now, too, there is a new law requiring penalties for probationers who acquire or attempt to acquire firearms.

As of late last year, there exists a legislative requirement, a requirement which we supported, that the U.S. Department of Justice develop a system not only to provide a master file of such criminals, but also to make it accessible to firearms dealers at the time of attempted firearms purchase.

This plea-bargaining proposal, if enacted into law, will provide the missing piece of the legislative puzzle to ensure that violent criminals like Purdy do not escape the net of justice.

This being the case, why not take this opportunity to enact it into law rather than infringe unnecessarily on the right of individual law-abiding citizens to keep and bear arms by banning semiautomatic firearms or restricting further law-abiding citizens' access to them?

Mr. Chairman, in this age of international terrorism when warnings come regularly to the public regarding the possible outbreak of terrorist attacks against American citizens within the United States, it would show a callous disregard not only for the rights of American citizens, but also for our safety if Congress were to enact legislation making it difficult or impossible for law-abiding American citizens to obtain the semiautomatic firearms with which our lives and the lives and safety of our loved ones might need to be protected.

Terrorists will not be stopped by antigun laws from acquiring or using firearms against the innocent.

Senator SIMON. Can you conclude your statement, please?

Mr. SNYDER. Sure.

Why pass laws to prevent the innocent from getting the firearms they may need to protect themselves from terrorists? Mr. Chairman, we would like the subcommittee to consider the plea-bargaining proposal and to act on it. Unlike the bogus crime-fighting proposals really directed against a large segment of the law-abiding citizenry, this is a genuine crime-fighting proposal.

It is time for Congress to get off the backs of the tens of millions of law-abiding American firearms owners and to get on the case of violent criminals.

Thank you.

[The prepared statement of Mr. Snyder follows:]



STATEMENT OF  
JOHN M. SNYDER  
PUBLIC AFFAIRS DIRECTOR  
CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS

Mr. Chairman and Members of the Subcommittee:

Please accept my thanks for this opportunity to testify before this body on the matter of semi-automatic assault rifles.

With all of the public attention being given this subject subsequent to the horrendous January 17 slaying of five school children and the wounding of 27 others with the use of a semi-automatic rifle in Stockton, California by Patrick Edward Purdy, who also took his own life, I am most grateful to the Subcommittee for the chance publicly to offer my thoughtful reflections on this tragedy and on the subsequent reactions to it.

It would be well to recall at this juncture the August 1, 1966 incident in which Charles Joseph Whitman climbed the clocktower which dominated the University of Texas campus at Austin and began a 96-minute terror spree in which he killed 16 people and wounded 20 more.

It would be well to recall that particular incident because in it Whitman did most of his mayhem with a bolt action Remington Model 700 in 6mm but finally was pinned down by police and armed citizen, including one firing an automatic rifle, a tripod-mounted M-14, thus limiting the mayhem Whitman was able to cause and making it possible for Austin police officer Ramiro Martinez to position himself for the final, savage encounter in which Martinez slew Whitman.

By recalling the 1966 Austin incident, we easily can see the beneficial use to which automatic rifles in the hands of law-abiding private citizens can be put. Unfortunately, though, we live in an era of apparent unreasoning reaction to irrational acts.

How else can one explain the senseless attack on the right of law-abiding American citizens to acquire and possess certain firearms, in this case semi-automatic rifles, when the Stockton incident calling forth this senseless attack indicates a breakdown in the criminal justice system's willingness or ability to protect citizens from criminals?

It almost appears that the spear carriers in this senseless attack effectively have been sucked into the cynical program developed by professional promoters of restrictive firearms legislation, one group of which, the Educational Fund to End Handgun Violence, stated in a recent pamphlet that the semi-automatic "weapons' menacing looks, coupled with the public's confusion over fully automatic

machine guns versus semiautomatic assault weapons - anything that looks like a machine gun is assumed to be a machine gun - can only increase that chance of public support for restrictions on these weapons."

This latest attack on the right to keep and bear arms, carried out in legislative halls and in certain media, has even taken on a macabre and ghoulish quality, as manifest on a recent national weekly magazine cover depicting a surrealist skull superimposed on a distorted map of the "lower 48" United States hovering over crossed assault rifles. "Armed America," the cover proclaims, "More guns, more shootings, more massacres."

In the face of such a flagrant attack on the right to keep and bear arms, what are we to do?

We are, I hope, to keep cool and to approach this whole matter in so rational a manner as to bring about an actual improvement in the criminal justice system without chopping up the rights of the innocent gun owners throughout the United States who had nothing to do with the horrible slaying of the Stockton school children or with other horrible attacks on other innocent people.

Let us hope that this body does what it can as part of a general legislative initiative in a reform of the plea bargaining system at the Federal and State levels to strike at the heart of the real cause for the Stockton tragedy.

Not only does this initiative strike at the heart of the Stockton shooting and similar incidents, it also meshes with recently enacted legislation to curb criminal violence.

We call for a reform of the plea bargaining system which would require a person charged with a violent felony to bargain with the criminal justice system over sentencing but not over the charge.

Under this proposal, the violent criminal suspect would have to plead guilty to the felony charge unless it were dropped by prosecutors or he went to trial. Any bargaining in which the suspect and the legal system engaged would have to be over the length of the sentence, even probation, but someone who wanted simply to evade a felony record would not be able to do so.

Underlining this proposal is the fact that Patrick Edward Purdy, who shot the Stockton elementary school children, would have been prohibited from buying any kind of firearm under existing Federal and California law if he had not been allowed to plead down from a robbery charge in Woodland, California in 1984.

Purdy reportedly had a long criminal record and even had attempted suicide while in police custody but had no record of felony convictions. That is why he legally was able to elude the intent of Federal firearms laws when buying a semi-automatic rifle in Oregon and why he was able to purchase handguns in California despite that State's present 15-day waiting period and criminal record check.

At least two spokesmen for national police organizations support this proposal to reform the plea bargaining system rather than proposals to attack private semi-automatic rifle possession.

Deputy Sheriff Dennis Ray Martin of Saginaw County, Michigan, National President of the 103,000-member American Federation of Police, says "there's no sense having laws forbidding felons from acquiring firearms when we allow such dangerous felons to plead to misdemeanors and violations. We support this proposal to reform the plea bargaining system.

"Even if the felon gets probation, there are safeguards under firearms provisions of the Drug Act passed last year. Now if a probationer goes to buy a gun, he forfeits the probation and must serve his original sentence in jail."

The Executive Director of the National Association of Chiefs of Police, Gerald S. Arenberg, also supports this new plea reform proposal as a solution to the Stockton problem in preference to bans and new restrictions on semi-automatic firearms.

"When violent criminals who have been arrested by police are allowed to go free, or escape the consequences of their crimes, the legal system is failing in its duty to society," he says.

"The fault in the Purdy case - and in almost all of these sensational 'headline' cases - is that the culprits should have been in jail - and would have been in jail. The way to safeguard against such tragedies is not to ban the firearms of law-abiding people - but to see that people like Purdy don't get a chance to commit such horrible acts.

"Police long have supported the idea of reforming the plea-bargaining system."

There already are Federal and State laws prohibiting violent felons from acquiring firearms. Now, too, there is a new law regarding penalties for probationers who acquire or attempt to acquire firearms.

As of late last year, there exists a legislative requirement, a requirement which we supported, that the U.S. Department of Justice develop a system not only to provide a master file of such criminals but also to make it accessible to firearms dealers at the time of attempted firearms purchase.

The plea bargaining reform proposal, if enacted into law, will provide the missing piece of the legislative puzzle to insure that violent criminals like Purdy do not escape the net of justice.

This being the case, why not take this opportunity to demonstrate genuine statesmanship and enact it into law rather than infringe unnecessarily on the right of individual, law-abiding American citizens to keep and bear arms by banning semi-automatic firearms or restricting further law-abiding citizens' access to them?

Following here, for the convenience of Members of the Subcommittee, is the wording of model legislation implementing this proposal:

"The Congress recognizes the necessity of plea agreements in criminal proceedings, but also recognizes that plea agreements reducing felony charges to misdemeanors may have unanticipated effects that are detrimental to public safety. One such effect is that misdemeanor convictions do not restrict an individual's right to purchase various types of firearms. There have been persons who have been charged with several felonies that were reduced to misdemeanors by plea agreements, and the person's criminal history then contains no felony convictions. Such persons are then able to purchase certain firearms of types that would be prohibited to them had they been convicted of the original felony charges. It is the intent of the Congress to restrict the authority of prosecutors to reduce certain felony charges, while still permitting the recommendation of sentencing at the misdemeanor level.

"A prosecutor shall not reduce a felony charge to a misdemeanor when the facts of the case clearly indicate that the defendant committed the felony. In such case, the prosecutor may agree to recommend a sentence less than the standard sentence range for the felony by recommending a sentence at a misdemeanor range if the defendant enters a plea of guilty to the felony charge.

"A prosecutor who enters into a plea agreement that violates the preceding paragraph (section) is personally liable for damages resulting from any crime involving a firearm committed by a person who would not have been able to obtain the firearm had not a felony charge been reduced to less than a felony by a plea agreement entered into by that prosecutor."

As the 1966 Austin incident mentioned earlier in this statement indicates, automatic firearms, including automatic firearms, in the hands of law-abiding private citizens can be necessary in restoring the peace and assisting the law enforcement community in the maintenance of public order. In that incident, law-enforcement officers and civilians, including one man firing a tripod-mounted M-14, acted together in firing so as to rip off chunks of concrete from the protective wall around the observation deck where Whitman was located. This forced Whitman to keep low and fire through drainage slits, and made it possible for Officer Ramirez, with Whitman so occupied, to approach the Whitman position.

It should also be noted, in connection with the 1966 Austin incident, that two police officers, George McCoy and Jerry Day, along with armed private citizen Allen Crum, had worked their way up the tower to a position near Whitman's position. When Crum began firing so as to ricochet a volley of bullets off a corner of the tower so as to draw Whitman's attention to himself, the ploy worked and Whitman began firing in Crum's direction. This gave Martinez the opportunity to round the corner for his confrontation with the mass murderer.



Other incidents also serve to indicate the necessary cooperation between law enforcement officers and armed citizens which can develop in fighting crime. In Buffalo, New York, during the blizzard of 1977, public authorities called on truckers to arm themselves and to assist the police in their struggle against thieves, robbers, muggers and other violent criminals.

In that same year, during the Johnstown, Pennsylvania flood, the Mayor told the city's citizens that they had to be able to defend themselves against criminals since public safety officials were so heavily engaged in dealing with the situation created by the flood that they could not deal with much of the crime which might arise.

Without reference to such notable specific cases as these, one could note generally that semi-automatic firearms are kept by citizens for home protection and by farmers and ranchers for use against farm pests and wild animals.

In this age of international terrorism, when warnings come regularly to the public regarding the possible outbreak of terrorist attacks against American citizens within the United States, it would show a callous disregard not only for the rights of American citizens but also for our safety if Congress were to enact legislation making it difficult or impossible for law-abiding American citizens to obtain the semi-automatic firearms with which our lives and the lives and safety of our loved ones could be protected.

Terrorists will not be stopped by anti-gun laws from acquiring or using firearms against the innocent. Why pass laws to prevent the innocent from getting the firearms they may need to protect themselves from terrorists?

It's possible, too, that well-organized and well-armed bands of terrorists could seek to undermine the very stability of the United States government, as they already have done to so many other governments around the world. In such a situation, a well-armed law-abiding citizenry, such as we now enjoy in the United States, could act to assist the government in thwarting such a move or series of moves. Why ban or restrict the arms with which the citizens could so assist the government?

While we certainly hope that no American Hitler or Stalin ever arises in the United States, we also should make sure that one of the factors which can prevent that from happening, that is a well-armed citizenry, never is eliminated or dissipated by unwise anti-gun legislation.

Right now, we're witnessing the international spectacle of the mighty Soviet Army turning tail and removing itself, retreating, if you will, from Afghanistan. This would not be happening if it were not for the fact that the Afghans are an armed citizenry, including with semi-automatic firearms and that they're not afraid to fight for their freedom.

How do you account for the fact that the mighty Soviet military machine, which has kept the disarmed citizenries of Eastern Europe and of many other parts of the world subjugated for so long has had its hat handed to it by the



rag-tag Afghans if you do not take into serious account the armed nature of the Afghan population?

While we may not like to admit it, the same point could be made with regard to the Viet Nameese who fought so successfully for so long with small arms, including semi-automatic firearms, against our own modern-equipped and armed military forces in Southeast Asia.

If the Polish people were well-armed today, do you think its freedom-loving spokesmen would have to go toadying to the Communist government for even a modicum of the rights and freedoms we take for granted in this country with our armed citizenry?

Do you think the Ethiopian genocide through deliberate massive starvation on the part of the government there ever would even have gotten off the ground had the Ethiopian citizenry been armed?

While some may scoff at these and similar citations, the fact of the matter is they are real and we should not overlook the obvious lesson to be gained from a consideration of them. An armed citizenry is an obstacle to tyranny and subjugation and a disarmed citizenry has been and may be an invitation to such tyranny and subjugation.

Given these considerations, Mr. Chairman and Members of this Subcommittee, why let public charlatans get away once again with a further perpetration of the snake oil of gun control on the American public?

There is ample general evidence to indicate that gun control is not the crime control panacea its promoters would have Congress and the public believe that it is.

For 75 years now, we've had the Sullivan Law in New York State on the books. For over 20 years, we've had the Federal Gun Control Act of 1968 on the books. For over 10 years, we've had the straight-jacketing District of Columbia anti-gun law on the books. Even in Canada, there's been a tough anti-gun law on the books for 10 years. At the time of each of these laws' enactment, the promoters of each one of them assured the public that each one of them would be effective in fighting crimes committed with firearms. Yet, the rates of crime committed with firearms are higher now than they've ever been before this. Why? Obviously, gun control is not the answer.

For over 50 years now, fully-automatic rifles, machine guns, so thoroughly have been regulated that it has been impossible for private citizens to obtain one without a Federal permit. To the best of my knowledge, not one of these legally-acquired and possessed firearms ever has been used in the perpetration of a criminal act. Yet we know that machine guns have been used by criminals in the perpetration of criminal acts. What does this tell you about gun control laws but that law-abiding citizens abide by them but criminals do not?

The same can be said about sawed-off shotguns. Rigorously restricted for 50 years, they still are a favored weapon of criminals, especially bank robbers.

There you have it. Gun control has not worked, does not work and will not work in fighting crime.

Gun control impinges on the right and freedom of law-abiding American citizens.

We believe that the plea bargaining reform proposal presented in this testimony, in conjunction with the legislation already on the books and herein described, will work in fighting crimes committed with firearms.

We'd like the Subcommittee to consider it and act on it. Unlike the bogus crime-fighting proposals really directed against a large segment of the law-abiding citizenry, this is a genuine crime-fighting proposal. It's time for Congress to get off the backs of the tens of millions of law-abiding American firearms owners and to get on the case of violent criminals.

Thank you.

Senator SIMON. Mr. Baker.

# STATEMENT OF JAMES JAY BAKER

Mr. BAKER. Mr. Chairman, on behalf of the National Rifle Association of America, thank you for the opportunity to testify, representing law-abiding gun owners. We received Senator Metzenbaum's bill, Senate bill 386, yesterday. We don't have a detailed analysis of it at this time, but I do have a few remarks specifically regarding that legislation.

Mr. Chairman, millions of hunters and sportsmen own and use semiautomatic rifles and shotguns, and have for decades. Many of the more popular current models for sporting use are included in my testimony and I won't detail them here.

Military model semiautomatic firearms, rifles, and carbines have been sold to the general public for decades as well as M1 Carbines, M1 Garands, AR-15's—over the last 40 years. These are all military model semiautomatics and are used in countless high-power target matches every year, including the national matches in Camp Perry, OH. They are purchased by hunters, target shooters, and collectors alike.

In short, Mr. Chairman, the National Rifle Association will not assist or cooperate with anyone in banning or restricting semiautomatic target and hunting firearms some choose to erroneously call assault weapons.

The attack on semiautomatic firearms is no less than an attack on an entire class of firearms that have been owned by law-abiding citizens throughout this century. In fact, some of the legislative proposals, including Senator Metzenbaum's proposal, call for imposing Federal felony prosecutions on law-abiding citizens that, in the case of the House legislation, do not surrender their firearms, or in the case of Senator Metzenbaum's legislation, do not register their lawfully purchased firearms. It is just this type of ill-considered legislation that the second amendment is designed to protect against.

Mr. Chairman, there is no functional difference—and I think you heard the Treasury Department tell you that this morning, the Bureau of Alcohol, Tobacco and Firearms—there is no functional difference between semiautomatic firearms of the type traditionally used in hunting or other recreational activities and those which are patterned after military firearms.

Senate bill 386 implicitly recognizes this definitional problem by failing to provide a definition at all. Section 3 of the bill defines assault weapons as those firearms designated in the bill, versions of those firearms, and firearms that are substantially identical.

We do not believe that the term "substantially identical," Senator, is specific at all. The term "substantially identical" is nowhere defined in the legislation. As we have heard from the Treasury Department today, there is no functional difference.

To my mind, the term "substantially identical" is equivalent to "without functional difference." So, here we are talking about all semiautomatic firearms, Senator. That is certainly the effect of the definition.

After failing to provide a definition, Senate bill 386 hands off the entire issue of definition to the Treasury Department. Although it is difficult to conceive of a semiautomatic firearm not already covered, that section also provides that all other semiautomatic firearms can be designated as assault weapons at the discretion of the Secretary of the Treasury.

These unnamed and undefined firearms would then be banned, and failure to register would be a Federal felony. Conservative estimates, Mr. Chairman, indicate that more than 20 million firearms currently possessed would be included under these proposals. Yet, these restrictions have not affected the drug traffickers using illegally acquired machine guns. These criminals circumvent the system, and always will.

The registration provisions of Senate bill 386 point up the misguided nature of this proposal. Section 6 requires lawful owners to register their firearms and provides a potential 10-year Federal felony for failure to do so. On the other hand, if a drug trafficker actually uses the firearm, he faces only a 5-year penalty under Senator Metzenbaum's legislation.

Given the current failure to prosecute even felons in possession of firearms, it is unconscionable to threaten law-abiding citizens with a Federal felony due to their possession of a lawfully purchased semiautomatic firearm that may later be found to be substantially identical under Senator Metzenbaum's legislation.

Mr. Chairman, in short, law-abiding gun owners will not sit by and allow an entire class of firearms to be banned while the criminal justice system allows criminals to remain on the streets of America.

Patrick Purdy would have been in jail if the system had worked. It didn't, and banning firearms will not make it work any better. When less than one-half of the convicted felons spend any time in jail, serious soul-searching is in order and tough revision of our criminal justice system is called for.

Law-abiding gun owners are willing to help, but not at the expense of their rights. Criminals should suffer under the full weight of the criminal justice system, and not law-abiding citizens.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Baker follows:]

TESTIMONY OF JAMES JAY BAKER  
DIRECTOR  
FEDERAL AFFAIRS

NATIONAL RIFLE ASSOCIATION  
INSTITUTE FOR LEGISLATIVE ACTION

ON  
SEMI-AUTOMATIC FIREARMS

BEFORE THE  
SUBCOMMITTEE ON THE CONSTITUTION  
COMMITTEE ON THE JUDICIARY  
UNITED STATE SENATE

FEBRUARY 10, 1989





NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
1600 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D.C. 20036

TESTIMONY ON SO-CALLED "ASSAULT WEAPONS" - ABSTRACT

\*The private purchase of new "assault rifles" has been banned since May 19, 1986. Technically, the correct definition of an assault rifle is a selective-fire military rifle. As such, they are fully-automatic firearms for the purposes of federal law.

\*The AKM-47 (actually a Model 56S, a copy of the AKM-47) used by Patrick Purdy in his heinous crime in Stockton, California on January 17th is a semi-automatic rifle functionally identical to millions of semi-automatic rifles owned by hunters and sportsmen in the United States for nearly a century. It was not converted to fully-automatic fire, nor is it "readily convertible." That semi-automatic rifle is no more "powerful" or more "rapid-fire" than any other semi-automatic hunting and target rifle owned by millions of Americans.

\*Among the more popular semi-automatic firearms currently owned by Americans are: the Ruger .44 Magnum Carbine, the Remington Model Four in .30-'06, the Heckler & Koch 770 in .308, the Browning BAR .30-'06, the Remington Model 1100 shotgun, the Ruger Mini-14 .223, the Colt AR-15 .223, and the Springfield Armory M1A .308. The Remington Model 1100 alone has sold more than 3 million copies in the U.S., the M1 Carbine some 5 million since World War II.

\*The NRA will oppose any attempts to ban or restrict semi-automatic target and hunting firearms some choose erroneously to call "assault weapons." In previous debates, the NRA worked with members of Congress and the Administration to craft meaningful definitions and meaningful legislation to address concerns that were shared by sportsmen and "gun control" advocates. This attack on semi-automatic firearms, however, is an attack on an entire class of firearms that have been owned by millions of law-abiding Americans throughout this century. What was once an attack on handguns, this year is an attack on rifles and shotguns.

\*Legislation like H.R. 669 and Senator Metzenbaum's proposal attempt to redefine the term "assault weapon." It is not possible to define "assault" firearms based on their ability to "accept" large capacity magazines, as these proposals do. Any firearm capable of "accepting" a box-type magazine is capable of "accepting" magazines of indeterminate capacity. Thus, for these proposed definitions to mean anything, they must mean the prohibition of virtually all semi-automatic rifles and pistols, and all tubular magazine shotguns as well.

\*The real lesson to be drawn from the Purdy crime is that Purdy was a criminal who ought to have been in jail rather than left free to roam the streets. Purdy had been arrested for the crimes of drug possession, solicitation of sex, illegal possession of dangerous weapons, receipt of stolen property, attempted robbery, criminal conspiracy, firing a pistol in a national forest, and resisting arrest. His plea bargains on some of those charges resulted in misdemeanor convictions only, not the felonies with which he was charged. Purdy's last contact with the criminal justice system resulted in a probation report that described him as a danger to himself and others.

\*Purdy's lack of a felony record meant he could and did comply with and pass the 15-day waiting period and police background check required under California law to purchase five pistols. It was the criminal justice system that failed those schoolchildren in the tragic incident in Stockton, California.

\*The NRA today proposes a series of crime-fighting initiatives. The NRA will support these initiatives with the same vigor with which we oppose restrictive firearms laws.

\*First, we propose the assignment of at least one Assistant U.S. Attorney in each district to prosecute felon-in-possession cases under 18 U.S.C. 922(g).

\*Second, we propose a five-year freeze on plea bargain agreements when individuals are charged with violent or drug trafficking crimes.

\*Third, we call for increased enforcement of the provisions of Public Law 99-308, the Firearms Owners' Protection Act. That law made it a federal felony, to be punished with mandatory penalties, to use a firearm while committing a drug-trafficking offense. If the Justice Department finds that firearms were acquired from out-of-state in an investigation of gun-running rings, the federal government should step in.

\*Fourth, we support the conversion to prisons of military bases scheduled to be closed, as well as reasonable funding mechanisms earmarked solely for the construction of Level III prison facilities.

\*Fifth, we support the establishment of a special, expedited death penalty for those who kill police officers in the course of committing a felony.

\*Sixth, we look forward to working with members of the Congress and the Administration to ensure that Section 6213 of Public Law 100-690 is carried out: That the Attorney General report to Congress this fall with a program allowing for the accurate and instantaneous screening of firearms purchasers at the point of purchase.

Mr. Chairman and Members of the Subcommittee,

On behalf of the National Rifle Association of America, I thank you for this opportunity to appear before you representing law-abiding gun owners. I ask that my entire testimony, as well as its attachments, be included in the record of these proceedings.

We received Senator Metzenbaum's S.386 yesterday, and will not give a detailed analysis of it at this time. Instead, I will confine my remarks to a general critique of H.R. 669 and S.386, as well as the issues of semi-automatic firearms, "gun control," and violent crime.

Let me say at the outset that the private purchase of new "assault rifles" has already been banned and has been since May 19, 1986. Assault rifles are included under the requirements of the National Firearms Act of 1934. Technically, the correct and only definition of an assault rifle is a selective-fire military rifle. As such, they are fully-automatic firearms, or machine guns and submachineguns, for the purposes of federal law. The rifle used by Patrick Purdy in his heinous crime is not an "assault" rifle, as has been so widely reported in the media. The AKM-47 (actually a Model 56S, a copy of the AKM-47) used by Purdy is a semi-automatic rifle functionally identical to millions of semi-automatic rifles owned by law-abiding Americans across the country, no more and no less. Semi-automatic firearms have been legally possessed in this country for almost one hundred years.

Millions of hunters and sportsmen own and use semi-automatic rifles and shotguns, and have for decades. Among the more popular current models for sporting use: the Ruger .44 Magnum Carbine, the Remington Model Four in .30-'06, Heckler & Koch 770 in .308, the Browning BAR .30-'06, the Remington Model 1100 shotgun, the Ruger Mini-14 .223, the Colt AR-15 .223, and the Springfield Armory M1A .308. The Remington Model 1100 alone has sold more than 3 million copies in the United States, the M1 Carbine some 5 million since World War II.

Military model semi-automatic rifles and carbines have been sold to the general public for decades. Millions of M1 Garands, M1 Carbines, M1As (the civilian semi-automatic model of the Army's M-14 rifle), and AR-15s have been sold to private citizens over the last 40 years. These are all military model semi-automatics and are used in countless high-power target matches every year including the national matches at Camp Perry, Ohio. They are purchased by hunters, target shooters, and collectors.

In short, Mr. Chairman, the National Rifle Association will not assist or cooperate with anyone in banning or restricting semi-automatic target and hunting firearms some choose to erroneously call "assault weapons." You will remember previous debates in which the NRA worked with members of Congress and the Administration to craft meaningful definitions and meaningful legislation to address concerns that were shared by sportsmen and other groups concerned with public safety issues.

On the armor-piercing ammunition issue, as you know, the NRA first opposed legislation that would have banned hunting and target ammunition because of overly broad definitions. We worked with members of Congress and the Administration to develop language that precisely defined the issue at hand, met police concerns, and protected the nation's law-abiding firearms owners.

On the so-called "plastic gun" issue, as you also know, the NRA opposed legislation that would have banned fully-detectable firearms because of yet another faulty definitional standard. We again worked with members of Congress and the Administration to develop language that precisely defined the issue, and again helped to produce workable legislative language that passed both bodies of Congress nearly unanimously.

The attack on semi-automatic firearms is no less than an attack on an entire class of firearms that have been owned by millions of law-abiding Americans throughout this century. In a sense, the NRA's historic position on gun control, at times characterized as paranoia by our opponents, has been vindicated. Advocates of gun control have finally admitted that they are not interested in protecting the rights of law-abiding gun owners -- they are merely interested in eliminating any type of firearm whenever presented with an emotionally charged opportunity to do so. What was once an attack on handguns is this year an attack on rifles and shotguns.

#### Critique of Proposals on Semi-Automatic Firearms

Sportsmen have been told for years that the reason gun control advocates targeted handguns was because they were not suitable for militia use, hunting, or self-protection and were therefore not included under the constitutional safeguard of the Second Amendment. We are now being told by anti-gun advocates and certain politicians that precisely because many semi-automatic firearms useful for hunting and target shooting

are patterned after their military counterparts, they should be banned or heavily restricted in the interest of public safety.

Today we are talking about the outright banning of an entire class of firearms that have been legally owned in this country for a century. In fact, legislative proposals in both bodies of Congress call for imposing federal felony prosecutions on law-abiding citizens that do not surrender or register their lawfully purchased firearms. It is just this type of ill-considered legislation that the Second Amendment is designed to protect against. And it is worth remembering that American citizens' constitutionally protected right to "keep and bear arms" puts the burden of proof on those whose first instinct is always to abridge that right.

One can imagine how defenders of the First Amendment would react if every time someone made a slanderous statement legislators were urged to restrict freedom of speech. The safeguards built into the Bill of Rights are not to be compromised or legislated away lightly — especially not simply as a reaction to the actions of a homicidal maniac who slipped through the cracks of a crack-ridden criminal justice system, and especially when those impacted are only law-abiding citizens. There is no rational reason to legislate against the inalienable rights of law-abiding individuals simply because some individuals abuse those same rights. Instead we should arrest, prosecute, sentence, and imprison the latter in an ongoing effort to protect the former.

Recognizing that many do not share our belief in those principles, I turn now to the specifics of proposals we have seen. Most bills introduced to date on the issue of semi-automatic firearms fail to distinguish between types of firearms in the manner of early drafts on the armor-piercing ammo and "plastic gun" issues. Unlike those issues, there is no middle ground between banning or restricting some semi-automatics on the one hand, and all semi-automatics on the other. The reason for that is simple: There is no functional difference between semi-automatic firearms of the type traditionally used in hunting or other recreational activities, and those which are patterned after military firearms of the modern age. That is why both an AKM-47 and a "traditional" Remington or Browning semi-automatic can be certified as having a sporting purpose on the one hand, and not "readily convertible," on the other.

Some proposals, H.R. 669 and S.386, attempt to redefine the term "assault weapon." In doing so, those bills encompass millions of semi-automatic firearms commonly used for hunting, target shooting, and self-protection. It is not possible to define "assault" firearms based on their ability to "accept" large capacity magazines.



Any firearm employing a box-type magazine is capable of "accepting" magazines of an indeterminate capacity. Even shotguns with integral tubular magazines are capable of accepting magazines of larger capacities. Thus, for these proposed definitions to mean anything, they must mean the prohibition of virtually all rifles and pistols, and all tubular magazine shotguns as well.

S. 386 implicitly recognizes this definitional problem by failing to provide a definition at all. Section 3 of S. 386 defines "assault weapons" as those firearms designated in the bill, "versions" of those firearms, and firearms that are "substantially identical" to those firearms. The term "substantially identical" is nowhere defined in the legislation. As we have heard from the Treasury Department today, there is no functional difference between semi-automatic firearms, whether on the list provided in Section 3 or not. To my mind, the term "substantially identical" is equivalent to without functional difference. Thus, the logic of Section 3 is circular: An "assault weapon" is a firearm so designated, based on its similarity to "assault weapons" so designated. It would have been much clearer, Mr. Chairman, for S.386 to define an "assault weapon" as any semi-automatic firearm, period. That is certainly the effect of the so-called definition.

After failing to provide a definition, S. 386 hands off the entire issue of definition -- in many ways the essence of legislation -- to the Treasury Department. Although it is difficult to conceive of a semi-automatic firearm not already covered in Section 3, that Section also provides that "all other semi-automatic firearms" can be designated as "assault weapons" at the discretion of the Treasury Secretary. These unnamed and undefined firearms would then be banned, and failure to register them would be a federal felony carrying a 10-year \$10,000 fine.

S. 386 would also place currently owned semi-automatic firearms under the highly restrictive requirements of the 1934 National Firearms Act. If virtually all semi-automatic firearms are included -- as they appear to be -- untold millions of the nation's 65 million firearms owners will annually be subjected to a system that processed less than 100,000 individuals over a 52-year span. Conservative estimates indicate more than 20 million firearms currently possessed would be included under many of the proposed definitions. These Title II restrictions are a wish list for gun control advocates. They include a lengthy federal background check, registration, restrictions on transportation, fingerprinting, and a sign-off by local law enforcement. Yet these restrictions have not affected those drug traffickers using illegally acquired machine guns or illegally acquired

and illegally converted semi-automatics to further their crimes. These criminals circumvent the system completely, and, by definition, always will. Needless to say, millions of hunters, competitive shooters, protective owners, and collectors should not be subjected to a system that has had absolutely no impact on machine gun use in violent drug trafficking crime. Millions of law-abiding gun owners and sportsmen will not sit idly by in contemplation of the several month procedure contained in the 1934 National Firearms Act. Further, there is no good reason relative to curtailing firearms abuse to subject law-abiding sportsmen who have owned semi-automatic firearms for decades to a system requiring them to submit federal registration forms to the Treasury Department and the F.B.I., and then ask for a sign-off from local law enforcement prior to buying the type of firearm their fathers taught them to hunt with.

The registration provisions of S. 386 point up the misguided nature of all "gun control" proposals. Section 6 requires the owner of a lawfully purchased firearm to locate a copy of the Federal Register listing prohibited semi-automatics. If his or her firearm is on that list, the owner must register it with the federal government within a month or face a 10-year prison sentence and a \$10,000 fine. On the other hand, if a drug trafficker actually uses a firearm on the list in a violent crime, he faces only a 5-year penalty. Given the current failure to prosecute even felons in possession of firearms, it is unconscionable to threaten law-abiding citizens with a federal felony due to their—possession of a lawfully purchased semi-automatic firearm that may later be found to be "substantially identical" to semi-automatic firearms on a list held by the Treasury Department.

At best, S.386 contemplates a form of super-waiting period, federal registration, and government background investigation in order to legitimize the ownership of a previously purchased, and previously lawful, semi-automatic firearm. In light of the rejection of that system in the 100th Congress, when the defeated proposal encompassed a seven-day, not a several-month, wait prior to the purchase of only pistols or revolvers it seems counterproductive to revisit that issue. I refer you to my testimony before this Subcommittee on June 16, 1987. The most troubling aspect of new proposals on this issue is that sportsmen were told last session that they should accept waiting period proposals because they would never extend to their rifles or shotguns. Mr. Chairman, this goes beyond the old adage: "give them an inch and they'll take a mile." The Congress refused last year to give that inch, yet some now expect them to give up that mile.

The National Rifle Association and untold millions of hunters, target shooters, and protective gun owners are prepared to fight every step of the way on this issue until this Congress begins to address serious problems — recognized by all in this room regardless of their position on so-called "assault rifles" — inherent in an abysmally inadequate criminal justice system.

#### Lessons of the Purdy Crime Lost

As Senator Metzenbaum indicated in his letter to me, Mr. Chairman, the impetus for this hearing was the tragic crime committed by Patrick Edward Purdy on January 17th in Stockton, California. Notwithstanding the dangers of legislating on the basis of cover stories and headlines, the facts surrounding the true causes of that tragic crime have largely been ignored.

The semi-automatic rifle used by Purdy was not converted to fully-automatic fire, nor is it readily convertible, as has been reported by many. That rifle and semi-automatic firearms generally are used lawfully for hunting in some 48 states, and can be seen in the hands of target shooters at nearly every rifle range in the country. The very reason this rifle can be imported into this country — its "sporting purpose" — refutes the claim of those who call it a "weapon of war." And finally, perhaps to the surprise of some, there is absolutely nothing new about the mechanical function of that particular semi-automatic rifle. It employs a re-loading principle, the semi-automatic action, that has been employed in both military and sporting rifles for most of this century. It is no more "powerful" or more "rapid-fire" — other misconceptions widely reported — than any other semi-automatic hunting or target rifle owned by millions of Americans.

In short, the only thing new about this rifle is the misapplication of the label "assault" by people who are trying to ban it. We are hearing that these rifles are the "weapon of choice" for criminals loose on the streets. Just last year, Mr. Chairman, this Congress was asked to consider a national waiting period and background check for pistols and revolvers because they were called the "weapons of choice" for those same criminals. Just this week, Lt. James Moran, the commander of the Ballistics Unit for the New York City Police Department set the record straight in the NEW YORK TIMES: "A rifle is not what usually is used by the criminals. They'll have handguns or sawed-off shotguns. You have more firepower with a 9-millimeter handgun than you do with an

AK-47. . . . The rifle is big. . . . These drug dealers are more inclined to use the 9-millimeter pistol than go to a cumbersome AK-47 rifle." Thus, it is clear to the NRA that most who propose restrictive gun control are not focusing on criminals and their guns, they only care about banning and or restricting firearms, period.

The real lesson to be drawn from the Purdy crime is that Patrick Edward Purdy was a criminal who ought to have been in jail rather than left free to roam the streets. Purdy had a seven-year history of involvement with the California criminal justice system. He had been arrested for the crimes of drug possession, solicitation of sex, illegal possession of dangerous weapons, receipt of stolen property, attempted robbery, criminal conspiracy, firing a pistol in a national forest, and resisting arrest. His plea bargains on some of these charges resulted in misdemeanor convictions only, not the felonies with which he was charged and should have been prosecuted. His last contact with the criminal justice system resulted in probation, even though his own probation report described him as a danger to himself and others. Because of this failure of the criminal justice system, Purdy's lack of a felony record meant he could and did comply with and pass the 15-day waiting period and police background check required under California law to purchase five pistols. It was the criminal justice system that failed those five schoolchildren, and resulted in the tragic incident in Stockton, California.

In fact, the California probation system was the subject of an extensive study published in 1985 by the Rand Corporation and the National Institute of Justice. The National Institute of Justice concluded that felony probation "does present a serious threat to public safety." The Rand Corporation studied data on more than 16,000 felons, and recidivism data on a subsample of 1,672 who received probation in Los Angeles and Alameda Counties. The study found that:

- \* 65% of the total sample were rearrested;
- \* 53% had official charges filed against them;
- \* 75% of those charges involved burglary, theft, robbery, or other violent crimes;
- \* 51% were reconvicted;
- \* 18% were convicted of homicide, rape, assault, robbery, or weapons offenses;
- \* 34% were sent back to jail or prison.

Clearly, decisions regarding probation are being driven by concerns over prison overcrowding and not by determinations that certain individuals do not pose a risk to society.

As we meet here today, the combined failure of gun control and the criminal justice system is all around us. As you know, the District of Columbia has the most restrictive gun control laws in the nation. Handguns are banned, and even a bill similar to H.R. 669, Congressman Berman's semi-automatic ban bill, is in force. Yet violent crime is rampant in the city at levels far exceeding those experienced before the imposition of the D.C. gun ban. One reason for that may be found in the treatment of the two individuals who shot those youths at Wilson High School recently. They were charged with four counts and one count of assault with intent to kill, respectively. The first paid \$2,250 to get out of jail on a surety bond. The second paid only \$450. But we can take solace in the fact that they were ordered to obey a curfew. It's no wonder a teacher at another D.C. school was reported as saying: "What would they have had to have done to be denied bail . . . wipe out the whole school?"

Instead of improving the criminal justice system, gun control advocates are exploring new ways to disarm or restrict the law-abiding. As we meet here, the City Council is considering legislation to make handgun manufacturers strictly liable for the criminal misuse of their products -- despite the fact that handgun manufacturers are already virtually prohibited from selling their products in the District, and have been since 1976; and despite the fact that such a legal theory has been discredited in every state of the nation. The intention of the D.C. City Council and the gun control advocates generally in pushing this legislation is clear: export the District's failed gun ban by making firearms manufacturers uninsurable.

Yet across the United States, the private ownership of firearms by the law-abiding is a valid and valuable response to failures of the criminal justice system. Criminologists report that private firearms ownership is both a general and specific deterrent to violent crime and violent criminals. One independent study estimates that one million Americans use rifles, shotguns, and pistols each year for self-protection.

#### **NRA's Crime-Fighting Proposal**

Today we are hearing the same tired proposals that sportsmen and gun owners have been hearing since the early 1900s. In the face of violent crime currently linked to massive drug smuggling and its financial profits, elected representatives in Congress and state legislatures call for making felons out of law-abiding citizens who insist on their



right to own firearms. At the same time, the criminal justice system is apparently unable or unwilling to prosecute and jail the real felons. The NRA asks you to explore and consider every possible means of restricting criminals and improving the criminal justice system before legislating any restrictions that will only impact the law-abiding citizen, and may well aid the criminal.

Law-abiding Americans believe that criminals who violate existing laws should suffer the penalties. But the fact is, violators are not suffering those penalties. Criminal justice failures were widely reported earlier this week. USA TODAY called it "Getting Off Easy." That's an accurate phrase when the average drug trafficker received a sentence of only six years -- and then actually served less than two years. THE WALL STREET JOURNAL reported that less than half the people convicted of felonies nationwide went to prison. And that doesn't begin to address the real issue, since an indeterminable number of people charged with penalties plea bargain down to obtain only a misdemeanor conviction.

Therefore, we propose today a series of crime-fighting initiatives. We pledge to you today that we will support these initiatives with the same vigor with which we oppose restrictive firearms laws. These proposals can be supported by sportsmen, law enforcement, and any gun control advocates who really care about fighting crime.

First, we propose the assignment of at least one Assistant U.S. Attorney in each district to prosecute felon-in-possession cases under 18 U.S.C. 922(g). Increased funding for U.S. Attorneys was a feature of the omnibus Anti-Drug Abuse Act, and we support that funding.

Second, we propose a five-year freeze on plea bargain agreements when individuals are charged with violent or drug trafficking crimes. The Purdy crime alone demonstrates the result of a plea bargain policy that has become all too common in the face of overcrowded court dockets and prison systems.

Third, we call for increased enforcement of the provisions of the Firearms Owners' Protection Act, Public Law 99-308. As you know, the law made it a federal felony, to be punished with mandatory penalties, to use a firearm while committing a drug-trafficking offense. Last year, Congress increased those penalties in the omnibus "Anti-Drug Abuse Act." Any reluctance by the government to prosecute federal gun-law violators who have been arrested and charged with local offenses, but who are also violating federal laws against possession by felons, particularly of Title II weapons such as sawed-off shotguns or unregistered machine guns, must be addressed. If the Justice Department

finds that firearms were acquired from out of state in an investigation of gun-running rings, the federal government should step in. This would assist local government in a number of ways. First, it would make real the largely rhetorical federal assistance in the "State Firearms Control Assistance Act" which is the first title of the 1968 Gun Control Act. Second, it would mean tougher jail sentences than may occur with merely local prosecution. And third, it would help with the problem of expensive and overcrowded state prisons by diverting the most serious of drug-trafficking offenders to the federal system.

Fourth, we support two measures aimed at increasing the nation's prison space. Initially, the federal government should look to those military bases which are scheduled for closure. With minimal expense, these bases could be converted to prisons for use by the federal government or by the states in which they are located. As a second step, the NRA is prepared to support reasonable funding mechanisms earmarked solely for the construction of Level III prison facilities to house the most violent criminal offenders.

Fifth, we support the establishment of a special, expedited death penalty for those who kill police officers in the course of committing a felony or who police officers' their family members in retribution for the performance of their duties.

Sixth, we look forward to working with members of Congress and the Administration to ensure that the mandate of the McCollum substitute to the so-called "Brady Amendment" is carried out: That the Attorney General report to Congress this fall with a program that will allow for the accurate and instantaneous screening of firearms purchasers at the point of purchase.

We are confident that broad support for these proposals can be garnered from most of the groups represented in this room today. We are also confident that reasonable individuals will agree that these proposals hold far greater promise for reducing the nation's appalling level of violent crime than does any ill-conceived and misdirected gun control proposal. Thank you.

Senator SIMON. Thank you, Mr. Baker.  
Mr. Knox.

#### STATEMENT OF NEAL KNOX

Mr. KNOX. Thank you, Mr. Chairman, members of the committee. I appreciate this opportunity to testify on behalf of the Firearms Coalition and the million readers of my regular columns in *Guns & Ammo*, *Shotgun News*, *Handloader*, and *Rifle* magazines.

In my 5 minutes, I will attempt to convey what we think of this bill and what we feel about this bill and the similar bills that are being proposed across the Nation. Once again, the advocates of firearms prohibition are using the emotional outpouring following a tragedy to propose legislation which would not have prevented that tragedy.

Once again, the stated objective—this time, a ban on “assault rifles,”—is an undefinable term like “Saturday night special,” which the drafters use to confuse the public while attempting to ban as many firearms as they possibly can.

Once again, the failures of the criminal justice system, the failures of the existing firearms laws, and the certain failure of the proposed law are ignored. Once again, the Constitution of the United States would be shredded and trampled by those who claim to be concerned about civil liberties.

Some of the witnesses today can see only the bloody bodies of those innocent children in Stockton, and everyone of us shares the grief of those who loved them. But, Mr. Chairman, in the past couple of weeks I have been hearing from people who witnessed the bloody bodies of American soldiers in Vietnam, in Korea, on Iwo Jima, and in France. They fought with the U.S. service rifles that bills like this one would prohibit, and they are angry.

Each of them has told me that they risked their lives fighting to preserve this Nation, not the soil on which we stand, not this Capitol, not the President, not the Congress, but they fought and risked their lives and saw their friends die for the fundamental rights shared by every American and in the hope of preserving and passing on those rights to their children and their children's children. To them and to me, not one of our civil liberties is more important than the right to keep and bear arms.

Sir William Blackstone, who codified the English common law on which our law is based, described the right to bear arms as one of the fundamental rights of Englishmen. The common man of America inherently understands that this ancient common law right is his right. That right is the insurance policy that the Founders of this Nation provided to guarantee the rest of our civil liberties. The beauty of the Thomas Jefferson and James Madison freedom insurance is that so long as the right exists, it is not needed.

In 1833, Justice Story described the right to keep and bear arms as the palladium, the guardian of all our other liberties, calling it “a strong moral check against the usurpation and arbitrary powers of rulers.”

In 1859, the Texas supreme court put it more bluntly, “The people cannot be effectually oppressed and enslaved who are not first disarmed.” Those who sneer ignore the fact that it is true.

Before the Civil War, a slave could be put to death for laying his hands on a gun. Slave owners were subject to heavy fines for allowing blacks to learn how to use a gun. In 1857, the U.S. Supreme Court declared that freed slave Dred Scott could not have the full rights of American citizenship, for that would allow freed slaves to possess guns and attend political meetings.

Will we be enslaved if this bill were to pass? Probably not, probably not while I am alive, but we cannot be enslaved if this bill and bills like it are defeated.

Mr. Chairman, I see those five bodies on the Stockton schoolyard. Those children died pointlessly and tragically, but this bill won't bring them back. I also see those thousands of bodies spread from Bunker Hill to Bastogne, from Pork Chop Hill to Pleiku. They, too, died tragically, but they did not die pointlessly. They died for the right that I came here today to defend.

I will be glad to answer your questions.

[The prepared statement of Mr. Knox follows:]

**TESTIMONY OF NEAL KNOX**  
**Executive Director, The Firearms Coalition**  
**Concerning "Assault Rifles"**  
**Before the Senate Subcommittee on the Constitution**  
**February 10, 1989**

Mr. Chairman, members of the committee. I appreciate this opportunity to testify on behalf of the Firearms Coalition and the million readers of my regular columns in Shotgun News, Handloader, Rifle and Guns & Ammo magazines.

The effort to ban so-called "assault rifles" represents a public admission by the advocates of "gun control" that their objective is not just to regulate or ban handguns, as they have claimed, but rifles and shotguns as well. The definitions used in state and federal bills now being considered would not only ban the military-type firearms being waved before the cameras, but some of the most popular rifles and shotguns designed and used for hunting, trap and skeet, and other forms of recreation.

The arguments used to support these bills are evidence of the predicted switch of criminal misusers of firearms from relatively low-powered handguns to far more lethal shotguns and rifles -- a switch exacerbated by the wrong-headed efforts to ban production and sale of handguns, instead of focussing upon criminal acts.

As recently as 1986, James D. Wright of the University of Massachusetts -- once a staunch advocate of interdictive gun laws -- stated in "The Armed Criminal in America," research done for the Justice Department: "certain commonly proposed gun-banning measures could have strongly undesirable consequences, resulting in the substitution of more powerful and more lethal arms."

Granted, Wright was speaking of criminal misuse, not insane acts such the murders of five children on a Stockton, CA schoolyard. But no matter what restrictions may be placed upon sane and law-abiding citizens, there is no way to prevent such tragedies. If Patrick Purdy had not owned an AK semi-automatic rifle, those children obviously would not have been shot with a 7.62x39; but they could have been shot with the 15-shot Taurus 9mm pistol Purdy also carried on that schoolyard. Or even more of the 400 children crowded on that schoolyard could have died and been injured if he had driven his car across it, or thrown his "Molotov cocktails."

It should be underscored that Purdy was the very type of individual who supposedly would have been prevented from obtaining a firearm under a waiting period/police background check such as this committee considered last fall. He had a lengthy record of arrest and convictions, including drug violations and illegal manufacture of a machine gun; a police



psychiatrist had found him a danger to himself and the public; he was reportedly drawing \$682 monthly from the Social Security Administration as mentally disabled. Yet five times he obtained handguns after undergoing California's touted 15-day waiting period/background investigation, most recently obtaining the Taurus 9mm with which he killed himself the next school day after he obtained it.

No legislation specifically defining "assault rifle" is before this committee, but all of the state bills I have seen, as well as H.R. 669 by Rep. Howard Berman in the House, include variations of a definition used by California Attorney General John Van de Kamp in a mailing to law enforcement officials Dec. 5, 1988. That letter states the Attorney General's intent to draft legislation banning private possession of "assault rifles," and requested statistics to justify such a ban. His definition of "assault rifle" includes more than half of all long guns made in this country, for it includes most common .22 rimfire autoloading rifles, many semi-automatic centerfire hunting rifles, and all shotguns -- of any action type -- with five-shot capacity, which includes the most-popular shotguns made.

The Attorney General's definition of "assault rifle" even includes the 5-shot Remington Model 1100 shotgun, which Handgun Control Inc. co-chairman Nelson Shields once told me he owns for waterfowl hunting. When such effects are pointed out, it is claimed that they are mere "drafting errors," and that the sponsors never intended to include common guns. Frankly, I find such statements difficult to believe, in light of the considerable firearms expertise demonstrated elsewhere.

As an example, the definition of "assault rifle" used in last summer's proposed Senate amendment to the drug bill reportedly was "any shotgun or semi-automatic rifle patterned after a military firearm." The majority of U.S.-made repeating shotguns would be included in that definition, for all the most-popular commercial shotguns have been used by U.S. forces in combat in World Wars I or II, Korea or Vietnam.

I have stressed the problem of definition for the simple fact that it is impossible to make a meaningful distinction between hunting guns, self-defense guns and military small arms.

Magazine capacity is not a meaningful distinction, for in forms of pistol competition which include reloading, it requires only about 1.5 seconds to change magazines. It is illusory to think that a gun is "more dangerous" with one 30-shot magazine than with two 15-shot magazines, or three 10-shot magazines.

Action type isn't a meaningful distinction, for the Model 12 "pump" Winchester shotgun can be fired slightly more quickly than a Remington Model 1100 autoloader. In less than three seconds

the common 12 gauge Model 12 can fire six 00 buckshot loads, each charged with 12 .33 caliber balls -- 72 bullets in three seconds, each ball capable of a fatal or disabling wound a city block away. The Model 1100 can discharge 60 .33 caliber bullets in about 2 1/2 seconds, which is more firepower than any conventional machine gun.

It is my opinion as a court-qualified "firearms expert" that either the six-shot Model 12 or the five Shot Model 1100 Remington 12 gauge hunting shotguns are more lethal at ranges under 50 yards than either the semi or full-automatic versions of the AK-47 with 7.62x39 military ammunition.

Because so many hunting and competition guns would be banned by Van de Kamp's definition, major changes were made in the California Senate bill by David Roberti, and in almost identically worded definitions in bills introduced in Maryland and the U.S. House (H.R. 669). Each of those bills makes such modifications as their sponsors felt were necessary to make their bills politically palatable, while retaining their goal of banning as many long guns as possible.

One amendment increased the acceptable maximum capacity of unrestricted shotguns by one round to five rounds total, which would make most tubular magazine shotguns legal, but still leaves the popular six-shot Model 12 Winchester/Browning trap, skeet and hunting shotgun branded as an "assault rifle."

Another amendment broadened the semi-auto rifle definition to "Any semi-automatic that accepts a detachable magazine with a capacity of 20 or more rounds of ammunition" H.R. 669 uses that language but exempts popular .22 rimfire autoloading rifles. The Maryland bill makes it apply to rimfire rifles and all semi-automatic handguns. Every box-magazine rifle or handgun is capable of accepting 20 or even 50-shot magazines, and such easily made magazines are presently available for most guns.

Mr. Chairman, as this testimony was being prepared, a member of Mr. Metzenbaum's staff informed me that the "capable of accepting a 20-round magazine" definition is being considered in draft legislation. However, I was told the bill would initially ban certain specific makes and models, then abdicate the definitional problem to the Treasury and Justice Departments, which would in effect be responsible for both writing and enforcing the law.

That is reminiscent of the method used for avoiding Congressional responsibility on other difficult issues, such as dealing with budget deficits and setting Congressional pay scales. Without regard to the merits of the issue, I object to that method of legislating.

While I have emphasized the huge number of guns used for hunting which would be banned by so-called "assault rifle" legislation, hunting is not the issue, nor is whether I "need" a particular type firearm for hunting. I resent anyone telling me what I "need" just as much as I resent anyone telling me what I may read; I am a law-abiding citizen who resents being treated as a criminal because I own and lawfully use firearms.

To me, and those I represent, guns are mechanically interesting, historically interesting and aesthetically interesting. But they are much more than that. In his Commentaries on the Constitution Supreme Court Justice Story wrote: "The right of the citizen to keep and bear arms has justly been considered as the palladium [-- the guardian --] of the liberties of a republic; since it offers a strong moral check against the usurpation and arbitrary power of rulers."

In Federalist Paper No. 46, James Madison wrote derisively of the governments of Europe which "are afraid to trust their peoples with arms." Madison would be appalled that this Senate Subcommittee on the Constitution is considering legislation which is so obviously a violation of the Constitution.

In U.S. v. Miller (1939), the only Second Amendment decision in this century, the Supreme Court upheld a portion of the National Firearms Act's restrictions on the narrow ground that because no evidence had been presented that short-barreled shotguns have "some reasonable relationship to the preservation or efficiency of a well-regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense."

If both sides had been heard in that case -- instead of only the agency which proposed the law -- evidence surely would have been presented that short-barrelled shotguns are and always have been part of U.S. military equipment. However, there can be no question that military-type rifles are military arms, and therefor included under the prohibitions upon the Congress guaranteed by the Second Amendment.

Even if the Second Amendment applied only to militia members, by law virtually everyone in this room is a member of the militia. Only four months after the Constitution was ratified, the Militia Act of 1792 established two classes of militia: (a) those formally organized into militia units and (b) all other able-bodied men aged 18 to 45. The National Guard Act of 1903 specifically did not replace that militia but added a third class of Federally controlled militia (See Sec. 311, Title 10 U.S.C.).

In 1876, the Supreme Court, in U.S. v Cruikshank recognized

possession of arms as a fundamental right, stating "the bearing of arms for a lawful purpose is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence." Accordingly, since none of the Bill of Rights had then been interpreted as limitations on other than the Congress, the Cruikshank court ruled that the First and Second Amendments limited the national government, but did not prohibit the Ku Klux Klan from preventing freed black slaves from holding political meetings or having guns. It is most unlikely that the Supreme Court would reach such a decision today.

In 1960 Justice Hugo Black, in "The Bill of Rights" (35 N.Y.U.L. Rev. 865, 873), wrote that the Second Amendment is an "absolute" prohibition against infringement by Congress. The reason, as made clear by the writings of the Constitutional framers, was that the right of the people to keep and bear arms was intended as an insurance policy guaranteeing governmental adherence to the First Amendment and the rest of the Bill of Rights.

Some claim that the Second Amendment was intended to apply only to organized militia, rather than as an individual right. But an effort to limit the Second Amendment by adding "for the common defense" was attempted when it was debated in the Senate of the First Congress. That amendment was soundly defeated, but revisionists act as if it had passed. (Journal of the First Session of the Senate of the United States, p. 20 (1820).)

Time Magazine recently stated that "surely" military-type rifles were not what the Constitutional Framers intended to protect from governmental infringement. On the contrary, as Dr. Joseph Olson, Professor of Law at Hamline University School of Law said while reviewing this testimony, military-type firearms "are precisely the type of weapon which the Second Amendment is designed to keep in the hands of the individual citizen."

The Second Amendment has nothing to do with hunting, target shooting, gun collecting or any other recreational use of firearms. The Second Amendment does, however, protect every citizens' right to protect himself, his family and this nation. The beauty of this "freedom insurance" plan is that so long as the right exists, it is never needed.

In the passions of the moment, aroused by the terrible tragedy on that Stockton, California schoolyard, it may be difficult to think of the overriding necessity to protect civil liberties, but protection of our civil rights -- every one of them guaranteed by the armed populace that Thomas Jefferson intended -- is the real issue in this debate.

I urge the members of this committee, and of this Senate, to carefully consider what is at stake. Thank you for this opportunity to present our views.

Senator SIMON. Thank you. I indicated earlier I like witnesses who say where they stand, and you three clearly have said where you stand.

There have been several references to the constitutional right to bear arms. I think the three of you would say that is not an unlimited right; that no one has a right to a nuclear weapon, for example, just because we are citizens. There is a line that has to be drawn somewhere.

I don't know of a single Member of the U.S. Senate who wants to disarm citizens who want to have a sporting gun. There may be one somewhere, but I have not met a Member of the U.S. Senate who has ever told me that.

In drawing that reasonable line, we had on this display table in front of us before here—one of the weapons was a MAC-10 that in a matter of seconds can be converted to a weapon that can shoot 1,100 rounds in a minute.

Mr. KNOX. No, sir.

Senator SIMON. Pardon?

Mr. KNOX. That is really not so, but go ahead.

Senator SIMON. Well, as a matter of fact, I have an article here from Time or Newsweek that mentions that, and I asked Mr. Conroy before the meeting. I pointed to that gun and said, is that correct, and he said it was correct.

Mr. KNOX. That is not the issue; the conversion is the issue.

Senator SIMON. Let me ask the three of you, if there is any reason why a citizen has to have a MAC-10 that fires 1,100 or 800 rounds a minute?

Mr. BAKER. Senator, clearly, law-abiding gun owners could get along without AK-47 semiautomatic versions, without UZI's, and without MAC-10's. Just as clearly, doing so would do nothing to stop the illegal use of those firearms.

If you want to base our firearms policy on the preferences of a homicidal maniac, that is fine, but we don't think that that is going to stop the next homicidal maniac from choosing another weapon.

Senator SIMON. But can't it stop the proliferation of these weapons?

Mr. BAKER. Senator, there are, by conservative estimates, 20 million semiautomatic firearms that have the capacity to fire just as many rounds as Mr. Purdy's AK did. And as I say, yes, law-abiding sportsmen, law-abiding gun owners can do without an AK-47, can do without an UZI or an AR-15.

But just as clearly, it is not going to do anything to stop the Patrick Purdy's of the world from obtaining a pump action shotgun loaded with buckshot that is much more devastating a firearm than an AK-47. There are any number of ways for people to kill people, Senator.

Senator SIMON. Let me ask you about that shotgun loaded with buckshot. How many people in the same amount of time would Mr. Purdy have killed with that?

Mr. BAKER. Well, you can take a pump action shotgun which is not semiautomatic; you have to physically reload it each time with a pump action. With an extension magazine of 8 rounds, there are 9 or 10 pellets in each—



Mr. KNOX. Twelve.

Mr. BAKER. Nine to twelve pellets, depending on gauge, in each shot shell. That is hundreds and hundreds of .38 caliber lead slugs that leave that particular pump action shotgun, the same one that duck hunters use every year.

So, if we are talking about lethality of a particular firearm, I think that it is a meaningless argument. Any firearm in the hands of a homicidal maniac is going to be lethal.

Senator SIMON. But some are more lethal than others simply because of the number of rounds you can fire in a minute.

Mr. BAKER. But they are not all semiautomatic, Senator. There are semiautomatic .22's that would be covered by Senator Metzenbaum's bill. There have been millions upon millions of them sold that contain 12 to 14 rounds of ammunition. They are just as deadly.

We are talking about 20 million firearms here that we are going to dump into a system, according to Senator Metzenbaum's bill, that has processed 110,000 firearms over 50 years.

Each of the 20 million firearms that are attached to an owner—they are going to have to be fingerprinted, subjected to a Federal background check. You are talking about waits and periods of time before registration and getting your registration back that are going to be astronomical—20 million fingerprint cards.

Senator SIMON. Mr. Snyder, in your statement—and I may have misunderstood it—by implication, I thought you were saying that there are some police organizations that are opposed to Senator Metzenbaum's bill.

We heard some police organizations testify for it today, but did I understand you correctly?

Mr. SNYDER. What I stated in my testimony was that the American Federation of Police and the National Association of Chiefs of Police support the proposal I put forward regarding a reform of the plea bargaining system—

Senator SIMON. Well, that is not my question.

Mr. SNYDER [continuing]. And I even included model legislation of that—in place of or in distinction from a general ban on semiautomatic firearms.

Senator SIMON. I think we ought to be tough on everyone who is involved in a crime and be very, very firm with anyone who is involved in a crime that has a gun. But my question is, have they said they are opposed to Senator Metzenbaum's bill?

Mr. SNYDER. Mr. Chairman, the bill offered by Senator Metzenbaum was not offered until Wednesday. It did not appear before the general public until the congressional Record of Thursday. So, you know, the first I received a copy of it was Thursday.

Senator SIMON. But so far as you know, no police organization is on record against it?

Mr. SNYDER. My testimony had to be handed in on Wednesday, you see.

Senator SIMON. OK, but your statement implied there were police organizations in opposition to this bill.

Mr. SNYDER. Well, there are police organizations in opposition to the general concept underlying the bill. But since the bill itself

hadn't been introduced at the time that the testimony had to be prepared, I can't really say specifically.

Senator SIMON. OK; that is what I was interested in knowing.

Senator SPECTER.

Senator SPECTER. Thank you, Mr. Chairman.

Mr. KNOX. Senator, if I might get back real quickly to your point, if I might, Senator SPECTER, on the FBI shootout in Florida, one of those guys was armed with a Ruger Mini 14. The other one was armed with, as I understand it, a Model 1100 Remington shotgun.

The Model 1100 Remington is a very common gun, and that would have been banned by the proposal that John Vandecamp, the attorney general of California, originally proposed. Now, the Model 12 shotgun, which is also very common, would be banned by that.

I have numerous guns in my rack which would be banned, and I am sure that your friends who have a .22 automatic pistol or rifle, they would be banned. Again, they are talking assault rifle, waving around an AK-47, but what they legislate against goes far beyond that, and that point is not being understood.

Senator SIMON. I am sure that is not the intent of Senator Metzenbaum, but what we want to do is to protect any hunter who has a .22 automatic pistol. We want to work with you; we want to work with responsible people to see that we protect the right of hunters to have sensible guns.

And I wish the three of you could have seen the faces of Ms. Mackey and Mr. Hanlon while you were testifying. They weren't saying a word, but from what I could see, it was powerful.

Mr. BAKER. Senator, nobody could fail to be moved by that testimony.

Mr. KNOX. Absolutely.

Mr. BAKER. No question, but in both cases we are talking about people that should have been behind bars, hardened criminals that will find firearms no matter how many law-abiding citizens are forced to give up theirs.

Mr. SNYDER. Mr. Chairman, the proposal that I offered would have made sure that Purdy was behind bars and you wouldn't have had to look at her face.

Senator SIMON. Senator SPECTER.

Senator SPECTER. Mr. Baker, you have testified about the difficulties in the definitions that Senator Metzenbaum has provided.

Mr. BAKER. Yes, sir.

Senator SPECTER. Are there any provisions which would differentiate an assault weapon from what has been classified as a sporting semiautomatic rifle?

Mr. BAKER. Senator, it is my understanding that the members of the Judiciary staff here were briefed by the Bureau of Alcohol, Tobacco and Firearms a few days ago on that very issue.

Any semiautomatic firearm, if you put a flash hider on it and take the wooden stock off and put a plastic stock on it and a carrying handle on it and paint it black, all of a sudden becomes an assault rifle in the eyes of the media and in the eyes of many others.

Senator SPECTER. If you do what to it?

Mr. BAKER. Basically, what I am getting at is that the only difference between a so-called sporting and, in some people's minds, legitimate semiautomatic firearm, sporting firearm, and a so-called assault rifle is aesthetics. There is no functional difference between an assault rifle, as defined by the media and some others, and a sporting firearm, other than the way they look. It is that simple.

Senator SPECTER. Well, when you have the so-called banana clip, that is nothing that is used, as somebody testified to earlier, by sportsmen, is it?

Mr. BAKER. Let me put it this way. Senator Metzenbaum's legislation calls for a ban on any magazine that holds 10 rounds or more, I believe. Is that correct?

Senator METZENBAUM. More than 10.

Mr. BAKER. There isn't a semiautomatic handgun made that doesn't hold more than that. Most of the high-capacity 9-mm handguns have magazines that hold 10 or more. He is talking about restricting those magazines.

The way I read the bill, you could own those magazines if you had them before, but you couldn't take them out of your house. It says you can't transport them; you can possess them. So, you have got a handgun that you don't have a magazine for.

The legislation is so broad and, in my mind, it would include almost every semiautomatic firearm produced and sold since the turn of the century, and we are talking about a lot of firearms.

Senator SPECTER. How many are the most rounds in a magazine which would fit into one of these semiautomatic rifles?

Mr. BAKER. Well, they are indeterminant. You can build a magazine, Senator, as large as you want. There is a misconception, though. People talk about firing 600 rounds a minute and what have you.

The magazines come in finite lengths, and to fire 600 rounds in a minute, that presumes that you are not changing magazines. There are no 600-round magazines.

Senator SPECTER. What is the most rounds in a magazine?

Mr. BAKER. They come in various sizes—5, 10, 15, 20, up to 75 in some cases.

Senator SPECTER. Well, if you disagree with Senator Metzenbaum on 10, is there any point where you would agree?

Mr. BAKER. Well, I don't think, to be quite honest with you, that that gets to the point. I mean, if we are talking about taking these out of the hands of law-abiding citizens, that is one argument. If we are talking about keeping them out of the hands of criminals, that is another.

Would this legislation keep them out of the hands of criminals? We don't believe so. By definition, Senator, criminals do not obey the law. Law-abiding people do.

If Patrick Purdy had been subjected to the criminal justice system in the way he should have been and prosecuted to the fullest extent of the law, we wouldn't be here today.

Senator SPECTER. Mr. Baker, what I am asking you about is, is there some cut-off point where how many rounds are used by what you classify as legitimate hunters as opposed to—do hunters use 75-round magazines?

Mr. BAKER. By and large, no, Senator, they don't, but they do use the firearms that will accept 75-round magazines. Magazines are at this point in time an unregulated item. There are billions and billions of magazines. It is something that would be absolutely an enforcement nightmare.

They have never been regulated in this country under Federal law. There are billions of them. While there are millions of firearms, there are billions of magazines, and it just seems to me an unworkable solution when we ought to be looking at the criminal.

Senator SPECTER. Well, I agree we ought to be looking at the criminal, but the question here is whether there is some definition of a weapon or a magazine which is beyond the purview of the legitimate hunter where they might be some regulation.

When you talk about very difficult to enforce, I agree with you about that. We have all sorts of laws that are difficult to enforce, but if there is some utility, then we ought to consider it. But I am trying to see if there is a line——

Mr. BAKER. What is the difference between——

Senator SPECTER. Wait a minute.

Mr. BAKER [continuing]. A 100-round magazine and five 20-rounds?

Senator SPECTER. Wait a minute. Let me finish my question.

Mr. BAKER. Yes, sir.

Senator SPECTER. Is there some size magazine which is beyond the range of the interests of the legitimate hunter?

Mr. BAKER. I don't know what that would be, Senator. I don't see a difference, to be quite honest with you, between a 100-round magazine and five 20-round magazines.

Senator SPECTER. Well, the difference is that you can't fire five 20's as fast as you fire one 100 because you have to replace them.

Mr. BAKER. Just about.

Mr. KNOX. It takes 1½ seconds.

Mr. BAKER. It takes a half of a second to take one magazine out and put another one in.

Senator SPECTER. A half of a second?

Mr. BAKER. A half of a second to a second.

Mr. KNOX. One-and-a-half seconds in competition.

Senator SPECTER. How much in competition?

Mr. KNOX. One-and-a-half seconds, average, in competition. In the competition games like the match I shot in Sunday a week ago in Phoenix, they shoot pistols, anywhere from 7- or 8- to 15-round magazines, and during the course of fire they must reload.

To drop the magazine and insert a new magazine requires 1½ seconds. The guy carries three or four magazines, perhaps, for the entire course of fire, and he will have anywhere from 7 or 8 to 15 shots per magazine.

Senator Specter, I am a court-qualified firearms expert, and to go back to Senator Simon's question earlier about lethality, I would——

Senator SPECTER. Now, wait a minute. I would like to stick to my question.

Mr. KNOX. OK, all right. Go ahead. Excuse me. I thought I had answered it.

Senator SPECTER. You can reply to Senator Simon later.



Mr. KNOX. I thought I had answered.

Senator SPECTER. My question turns on the time. One-and-a-half seconds is significant. A lot of damage can be done in 1½ seconds. What I am searching for is, is there some—if you can save 1½ seconds, that could have made a tremendous difference with Purdy. All people don't handle magazines as fast as you do, perhaps, Mr. Knox. Well, I am just asking that question to see if there isn't some line which is beyond the hunter's range.

I have got a yellow light. There are a couple of questions I want to ask before my time expires.

Mr. Snyder, you testified at length and your statement goes into the use of firearms for defense against criminals, and I have a problem with—

Mr. SNYDER. Where exactly—

Senator SPECTER. Well, you testified about it, but it comes up on page 5 at the bottom of the page where you talk about Johnstown, PA. That caught my eye, especially.

The mayor told the city citizens that they had to be able to defend themselves against criminals, since public safety officials were so heavily engaged in dealing with the situation created by the flood.

Well, that is an unusual situation, but the vigilante—

Mr. SNYDER. So was the Stockton situation.

Senator SPECTER. The vigilante situation is one which troubles me greatly, and my question to you is to what extent are the firearms really used by citizens to protect themselves from criminal acts against them.

Mr. SNYDER. Well, as I began in my testimony, you know, I mentioned that you had the Stockton tragedy which was a headline case. This did not appear in my oral testimony because of the time limits, but in the written testimony I referred to the Whitman case in Austin in 1966 where a number of armed citizens assisted the police in keeping Whitman pinned down so that the Austin officer could go up and confront him, finally.

Now, in that case one of the armed citizens, at least, according to a Newsweek report at the time, used an M-14. Now, there was a clear case—unusual, too, but—

Senator SPECTER. To help the police officer.

Mr. SNYDER. To help the police officers, yes, and that was not a policeman that helped them.

Senator SPECTER. Aside from a situation where citizens are helping police officers, to what extent, if you know or can give an informed judgment on it, an informed statement, to what extent do private citizens use the weapons to combat criminals where law enforcement officials are not doing an adequate job?

Mr. SNYDER. Well, it could happen whenever that was the weapon they had and they didn't have any others and they needed that, Senator.

Senator SPECTER. Well, I know it could happen, but my question is whether you have an opinion or a judgment or any factual basis for saying to what extent it does happen.

Mr. SNYDER. I don't have any definitive statistics, but I do have the anecdotal evidence that I cited in my statement. In fact, I would like to point out, in fairness, to answer that question that



these situations, while anecdotal, are no more anecdotal than the situation in Stockton, CA.

And I might also point out one thing that hasn't been pointed out so far, and that is that the number of people killed with the use, or I should say misuse, of semiautomatic firearms in the last 10 years is probably not as great, or certainly not much greater than the number of people killed in a single major airline tragedy.

Senator SIMON. Before Senator Metzenbaum's questions, we have two statements, one by the Mayor of Boston, MA, Raymond L. Flynn, and one by Senator Kennedy, that we will enter in the record.

[The statements of Mr. Flynn and Senator Kennedy follow:]



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR  
RAYMOND L. FLYNN

February 10, 1989

The Honorable Paul Simon, Chair  
Senate Judiciary Committee's  
Subcommittee on the Constitution  
524 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Simon:

As you well know, the escalating use of high powered weapons is one of the most important issues facing our cities today. The "drug war" we have been referring to for years has become a real war on the streets of our cities with real weapons now the rule, not the exception. The firepower of the drug lords armed with assault weapons has overpowered that of our nation's police departments and put the lives of police officers and innocent people in danger every day. I commend you for moving quickly to hold hearings on proposals to ban the sale of these assault weapons. Your leadership on this critical issue in the 101st Congress will be invaluable.

Attached is a statement which I delivered at the U.S. Conference of Mayor's Second Annual Conference on Crime and Drugs on Monday, February 6, 1989. The message was well received and led to passage of a resolution by the Mayors and Police Chiefs in attendance, calling for a ban on the manufacture and importation of semi-automatic assault weapons. Conference participants also called on Congress to reverse its position on the Brady Amendment "in view of the mass murders of children and other innocent people that have taken place in this country since its defeat."

While I applaud local initiatives to ban the sale of assault weapons and/or to impose a waiting period on the purchase of firearms, this is not a problem which can be solved city by city or even state by state. It is a national problem which cries out for a national solution, which is why your leadership is so important.

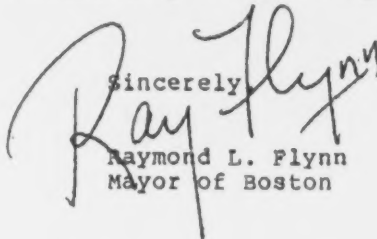
The Honorable Paul Simon  
February 10, 1989  
Page 2

Unlike many of the other pressing problems you and I confront each day, the solution to the gun issue has virtually no price tag. The only price to be paid is if Congress fails to act. It is the increased social costs of fear and death in our neighborhoods. It is the price paid when a policeman is gunned down or when a child kills a child over a vial of crack.

I respectfully request that my attached statement along with editorials which appeared in the Boston Herald and Boston Globe be submitted for the record at today's hearing. I urge immediate consideration of legislation such as S.386 introduced by Senator Metzenbaum, and quick passage of a final bill.

Again, thank you for your leadership on this very critical issue.

Sincerely

A handwritten signature in dark ink, appearing to read "Ray Flynn", is written over the typed name and title.

Raymond L. Flynn  
Mayor of Boston

Enclosures (3)



CITY OF BOSTON • MASSACHUSETTS

OFFICE OF THE MAYOR  
RAYMOND L. FLYNN

**Remarks of Boston Mayor  
Raymond L. Flynn  
to the  
United States Conference of Mayors  
Second National Conference on Crime and Drugs  
Washington, D.C.  
February 6, 1989**



I thank the U.S. Conference of Mayors for calling us together at the same time as the 101st Congress is beginning its work. We must use this opportunity to tell Washington that the war against drugs is escalating in our cities every day--as the firepower of the drug lords armed with automatic and semi-automatic weapons has overpowered that of our nation's police departments and put the lives of police officers and innocent people in danger every day.

The increasing violence in America's cities is an indisputable indication that drastic action must be taken. No longer can America's cities be subjected to inaction by government at any level. The glitter of Washington cannot be used as an excuse not to see the real dangers faced by people in the neighborhoods of our cities and the threat faced by police officers as they battle drugs on our city streets.

The availability of paramilitary weapons in this country is fueled by the illegal drug flow and the vast profits associated with it. Over 60,000 tons of illegal drugs will enter the United States this year, and only 5% of the drugs entering our country are interdicted.

The statistics about deaths by firearms in the United States are staggering. According to the federal Center for Disease Control, for 1984 and 1985, 62,897 people died from injuries due to firearms -- more than the entire number of casualties in the Vietnam war.

It's time to stop declaring war on drugs and violence, and actually begin the battle.



To do this, there are some issues which need our immediate attention, namely:

(1) The Spread of Guns in Our Neighborhoods

Despite the enactment of legislation by some states and localities to stop the spread of guns, people can still buy guns in one state and bring them into another. To stop the escalating armed violence in our neighborhoods, we must ask Congress to enact strong handgun control legislation and a total ban on assault weapons that is consistently enforced across state boundaries.

(2) Getting Federal Funds to the Frontlines of the Drug Wars

Our present system of distributing federal funds to local law enforcement agencies to fight drugs is a bureaucratic nightmare. Last year, the United States Conference of Mayors issued a report which documented that these funds were not getting to the front lines of the drug wars on our streets. It's time to take these limited resources, cut through the federal and state bureaucracies and get them to the local police departments, where they can best be put to use, now.

(3) Reforming Our Overloaded Judicial System

We must reform our overloaded judicial system so that serious offenders receive swift and sure punishment. We need

to implement laws already on the books and eliminate loopholes that render those laws ineffective, and that work against the efforts of the police. Where needed, the federal and state governments should work with localities to establish separate "drug courts", which would only handle drug cases, and;

(4) Law Enforcement Alone Can't Stop the Spread of Drugs

We must recognize that dedicated law enforcement officials, by themselves, cannot stop the spread of drug use in our society. We need a comprehensive strategy involving education at the earliest levels of school, treatment for all in need, more resources for interdiction and more coordination among law enforcement agencies at all levels.

You all know the statistics, but I will mention a few to emphasize the scope of the problem, how much our communities are already doing, and how much more needs to be done:

- o Drug arrests are up nationally as our police struggle to get drug dealers off the streets. In Boston, drug arrests have increased 31 percent in just one year--from 5,714 in 1987 to 7,496 in 1988.
- o In 1985, 8,092 people were killed by handguns in the United States compared to just 46 in Japan, 8 in Britain, and only 5 in Canada. In 1988, 81 percent of the drug related homicides in Boston were committed with a firearm, and 44 percent of those were committed with a hand gun. The number of firearms seized in drug arrests in Boston increased 59 percent between 1987 and 1988.

- o In 1987, more than half of the nearly 2500 children murdered in the United States were killed with firearms. Every day, 10 children in America are killed in handgun accidents, homicides, and suicides.
- o Homicide is the leading cause of death for young black men in our urban centers.
- o According to the House Select Committee on Narcotics, chaired by Congressman Charles Rangel, a leader in this drug fight -- over 6 million Americans are in need of drug treatment yet there are only 250-thousand slots. For the first 6 years of the Reagan Administration, Federal drug treatment dollars were cut 40 percent.
- o For the last three years the Reagan Administration has called on Congress to end anti-drug state and local law enforcement dollars

There is no single answer to solving the problem of drugs, instead there are six basic steps to reduce the demand and supply of drugs:

- o we must have a comprehensive educational program aimed at preventing people -- especially children -- from using drugs.
- o we must have readily-available, effective treatment programs to help addicts get drug free.
- o we must have rehabilitation programs to help them stay drug free.

- o we must have an effective, coordinated, fully funded federal interdiction program to prevent drugs from entering the country,
- o we must have coordinated, targeted law enforcement at the federal, state and local levels, and
- o we must have a judicial system which can deal with the ever-mounting drug caseload.

Agreeing on the solutions is one thing, putting them in place is another. One key is coordination, which means cooperation, at all levels of government. Boston now has 45 ongoing drug investigations with 7 different agencies. Coordination isn't easy but we are making it happen in Boston as it should everywhere. I recently called for the establishment of a Mayor's Anti-Drug Coordinating Council, with representatives from law enforcement, the judiciary, schools, and others, which will further improve coordination in drug cases.

The fact is, we all know the statistics. We know the steps needed to deal with drugs. We know coordination is critical. We know all of these things, yet we are still not winning the war on drugs. So we must ask ourselves why.

That brings us back to the problems I outlined at the beginning: Guns, resources for law enforcement, judicial reform and a more comprehensive approach to fighting drugs..

### GUNS

The drug war rages on daily in the neighborhoods of our cities. Honest citizens in our neighborhoods are desperate to

fight back. Yet an emerging set of statistics clearly shows that the "drug war" we have been referring to for years has become a real war on the streets of our cities with real weapons which are now the rule, not the exception.

There is something Congress can do right away that does not cost any money and does not need further study. Congress and the President can take two significant steps toward dealing with the escalating violence associated with drugs. Congress can pass and the President can sign into law an absolute ban on assault weapons. We must also work to enact the Brady Amendment which imposes a national 7 day waiting period for the purchase of handguns.

And I don't want to hear from the National Rifle Association that we are violating the rights of hunters. Don't tell me and the people in my neighborhoods that handguns or assault weapons like Uzis are for hunters when we have teenagers and young children being shot down in our streets. I can't imagine a single sports hunter who needs an AR-47 or an Uzi to shoot a deer. But in Boston and Washington D.C., and in cities across the country adults are shooting each other, adults are shooting kids, kids are shooting kids, and police officers are getting killed. Now, in more cases than ever before, handguns and assault weapons are part of the drug crisis.

It is time to ban assault weapons and to pass the Brady Amendment. It's up to the police officers and the mayors of this country and the upstanding citizens in the neighborhoods to go back to Congress and the President. There is a price tag, but only if we fail to act. It is the increased social



costs of fear and death in our neighborhoods. It is the price paid when children kill children over a vial of crack.

FEDERAL LAW ENFORCEMENT DOLLARS.

Let's be honest about federal anti-drug law enforcement programs. There simply aren't enough federal dollars to pay for everything we could do, so let's focus on paying for what we must do. Drugs are a problem everywhere, but there are hot spots nationally which need immediate, concentrated attention. The Federal government must identify those top 20 or 30 "hot spots" and target law enforcement resources and social service dollars to those areas. As in any war, you have to pick your battles.

Federal officials must be realistic about what our families, our police departments, and our cities can do on their own. We must be realistic about allocation of resources at the local, state and federal levels. We will look to the new Administration, and in particular the new Drug Czar -- William Bennett - to set priorities on the basis of an honest assessment of real resources and immediate needs. And, this year, let's make anti-drug resources one of the first items agreed upon instead of the last.

With regard to Mr. Bennett's new post, clearly we have some work to do to insure that the intent of Congress is carried out and the Drug Czar is made a member of the President's Cabinet, and not put on the shelf. William Bennett is the right person for the Drug Czar job, and I look forward to working with him.

JUDICIAL REFORMS

The third area of great concern is the judicial system. Without reform, our strong efforts in the areas of law enforcement are just a hoax. Just last week in Boston, three young men -- part of a gang -- drove by a street corner and fired an automatic weapon into a crowd. They hit their target and they also hit 3 innocent bystanders. Our police officers did their job. They arrested these gunmen within one hour. But by the end of the week 2 of the 3 gunmen were out on \$500 bail each. Both were repeat offenders. What message does that send to the community?

Let's be realistic about who is being arrested and who is being incarcerated. Police officers in Boston -- and I expect this is also true in your cities -- are doing their part to make drug arrests. In 1988 alone drug arrests increased 31 percent in Boston. But then what happens?

Once arrested the court system cannot handle the cases. Judges cannot respond with speedy trials and sure sentences. Prison space is not available to incarcerate everyone. The judicial system in place now is not working. The cops know it and the dealers know it and the public knows it. Not everyone arrested will go to jail and not everyone should. But we must target repeat offenders who must work to insure that once the good police work is done to arrest repeat offenders, a system is in place to put them in jail and keep them in jail.

And we have much work to do to implement the laws already on the books. In a recent review of cases brought by the Boston Police Department under the state's Bartley-Fox law,

large percentages of individuals escaped the mandatory one year sentence. In addition, minors are exempt from the law, and the increasing use of guns by minors is virtually unpunishable under current laws.

In Boston I've petitioned the State to establish a drug court which will focus full time on drug cases. Drug offenders don't just operate 9 to 5 Monday thru Friday, so the drug court won't keep a 9 to 5 schedule either. The drug court will cost money and, when we look to the Federal government for resources and technical assistance it has to be there. Just like it must be there for any of you mayors and police chiefs who want to establish a similar initiative in your community.

#### LAW ENFORCEMENT ALONE WON'T SOLVE THE PROBLEM

The drug problem is much more than a law enforcement issue. We need stronger federal leadership to examine the bigger picture, acknowledge the underlying social problems that lead to drug use, target the areas of greatest need and do more than just say no.

The war won't be won until we fundamentally alter our view of the fight against drugs. The real war against drugs is, in the long run, a battle to create economic opportunity.

Police departments are developing innovative programs, but enforcement of drug laws alone cannot stop the tide of drugs and violence. We cannot ignore the harsh reality of poverty and the problems it breeds. We must offer economic hope in situations where there is precious little hope and precious few

alternatives to the astounding short term profits that can be made in the drug trade.

Let's also be honest about education and treatment programs. Rev. Jesse Jackson is right when he says it is cheaper to keep kids in school and provide them with skills and jobs than it is to keep them in prison. We must have treatment facilities for people who are using drugs and want to stop -- not just talk about having enough treatment facilities, but actually open them up and run them.

President Bush has called for a focus on drug education and I applaud him for it. But we cannot just talk about drug education, we have to fund it. Drug education is working in Boston. Using the SPECDA/DARE program, Boston police officers go into fifth and sixth grade classrooms to talk about the hazards of drug use. The results are encouraging, young people are writing letters to Police Commissioner Roache and myself telling us that they have learned a lot from these programs and that they'll stay away from drugs. In fact, I would like to see us expand drug education to earlier grades, beginning with kindergarten.

We are reaching these fifth and sixth graders, but we are reaching further to get to our teenagers as well. We all know that teenagers like to join things, but in too many communities, the only organized activities are conducted by gangs or groups that may become gangs if not deterred. In Boston, we try to provide alternatives for kids to join. Through our street worker programs, we work to get the kids in organized recreation efforts at our Community Schools. We show

them that somebody cares, and we show them there are alternatives to drugs and gangs.

We have also developed the Boston Against Drugs program, which is an exciting public/private partnership that works. Boston businesses are pairing with teachers and parents in our neighborhoods to provide alternatives to drug use. The BAD program is not just about companies writing checks and walking away, it is about companies getting directly involved in a community, devoting human resources where they are needed most.

The quality of our educational systems -- and in particular our urban schools must also be a critical part of the dialogue on drugs. Just giving our schools more money is not the answer. With money must come standards and accountability. Parents must be brought into the equation. We must improve our inner city schools. The dropout rate in major cities is close to 50%. This is the best indicator that something is terribly wrong. How can we offer kids hope and economic opportunity if we are not offering them a basic education.

In closing let me repeat that we must fundamentally alter our view of the fight against drugs. We must provide hope and opportunity where it does not exist today. The record must begin to match the rhetoric because the people in our neighborhoods are losing faith: ...The federal government must provide the coordination and the resources. States must distribute those resources to areas of greatest need. Cities must coordinate and concentrate on principal offenders...Drug courts must be put in place to streamline prosecution ..Treatment must be available on request to get people off the lethal cycle of crime and drugs...Assault weapons should be



banned and a waiting period must be established for the purchase of handguns...We must educate our youth and give them the realistic hope of getting a job when their education is complete.

In my State of the City speech in January, I sent a message to the youngsters of Boston. I think it is a message that must go out to kids across the country. They must know that assistance is there if they want it. I told the young people of Boston if they want an education, we will provide it. If they need a job, we will help them attain the skills to get a job. If they are using drugs and want to quit we will provide treatment. We should do this in our cities and in our neighborhoods with the assistance of the private sector and in partnership with parents. But there is one requirement without exception that the youngsters must adhere to. They must stay off drugs. They must get off drugs. They cannot use drugs.

You cannot tell youngsters to "just say no" to drugs unless you offer positive alternatives they can "just say yes" to. That is our message.

If you haven't already, I urge you to share that message with the children of your cities. I urge you to make a compact with them, and to keep your end of the deal if they keep theirs. And I urge the Federal government and the business community to make it their highest priority to help those of us on the front lines keep that compact with our kids.

I hope you will come to Boston to see what we are doing, and look forward to hearing your success stories.

Thank you, and good luck.

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## Boston Herald

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# Limiting guns: Mayor Flynn is right

ONE of the worn-out slogans members of the National Rifle Association and the Gun Owners Action League like to spout is the tiresome ditty about how guns don't kill people, people kill people. Spare us this argument, please. The fact is guns *do* kill people. It was an assault rifle that killed five children and wounded 29 others in Stockton, Calif., last month, just as it was a gun which wounded four people on the streets of Roxbury last week.

Guns and semi-automatic weapons, AK-47s and Uzis, the no-one-should-be-without-one items that the National Rifle Association would like everyone to believe he has the right to have are not harmless toys. More guns mean more murders. One has only to read the papers every day to realize this.

This is why we support Mayor Ray Flynn, who was in Washington Monday, addressing the U.S. Conference of Mayors to enlist their support for a nationwide seven-day waiting period on all handgun purchases and a ban on powerful automatic and semi-automatic assault weapons.

"The firepower of the drug lords armed with automatic

and semi-automatic weapons has overpowered that of the nation's police departments and put the lives of police officers and innocent people in danger every day," Flynn said, which simply means that these days, the thugs have better guns than the police.

Not that this is news to anybody. For months Roxbury has been a veritable war zone. Residents are afraid to go out after dark because hoods and gangs roam the streets with deadly weapons. Last summer an 11-year-old child was killed on the streets; just last week, three innocent bystanders got caught in the crossfire of two warring gangs. Is this the way people should have to live, hostages in their houses, trapped by their growing fears? Is this the future for all our cities?

The mayor is absolutely right to ask for nationwide support. "I can't imagine a single sports hunter who needs an AK-47 or an Uzi to shoot deer," he said in response to the National Rifle Association's opposition to any kind of gun control.

It's time that we control these guns. In too many of our cities, these guns are already controlling us.

## Taking aim at the NRA

The top priority in gun control in 1989 is banning assault weapons. The distribution of military-style, rapid-fire weapons has become a national issue, in part because of the school-yard slaughter in Stockton, Calif., and in part because of growing awareness of the role of such guns in drug traffic.

The National Rifle Association has a reputation as a fearsome political force, but by having taken extreme positions, it has begun to develop a track record as a loser. The NRA is on weak ground in trying to rationalize civilian ownership of military weapons. Gun-control proponents should target this area of vulnerability.

Ridding America of small weapons designed for easy concealment and close-range killing is another priority. Soon after the assassination of Robert Kennedy in 1968, the Gun Control Act restricted the import of some handguns known as "Saturday night specials." That ban on "snubbies," which are designed for concealment and close fire, must be

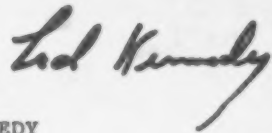
extended to comparable US-made weapons.

In 1985, a supermarket worker in Maryland was shot with the type of snubbe used in the assassination attempt on President Reagan. The worker sued the US manufacturer and won. State courts upheld this extension of product-liability law, establishing the contention that the manufacturer and those who sold the gun knew they were selling a dangerous weapon.

When Maryland passed a law banning the manufacture and sale of Saturday night specials, the NRA tried to revoke the law through a referendum. It spent \$7 million on direct mail and television advertising, but it lost.

Maryland is a mixed urban and rural state whose Democratic majority tilted for George Bush. Its publicists describe it as "Little America." One suspects that with some planning, the Maryland victory could be replicated.

When the NRA upholds the sporting tradition, it deserves respect. When it flacks for the purveyors of lethality, it deserves a whacking.



## STATEMENT OF SENATOR EDWARD M. KENNEDY

## SENATE JUDICIARY COMMITTEE ASSAULT WEAPONS HEARING

FEBRUARY 10, 1989

For those who wondered whether senseless daily gun killings in America could get worse, the answer lies in the fact that gruesome killings caused by easily obtained assault weapons are becoming all too frequent. And for those who opposed our efforts last year to limit paramilitary weapons and prevent gun violence in schools, we know how wrong were their claims that existing laws are adequate.

The problem is compounded by the fact that recent incidents have resulted in a surge in sales of these deadly weapons. The ease with which these weapons can be obtained is fueling the arms race on the streets of every community in America.

At a time when budget constraints make it difficult for law enforcement agencies to outfit themselves with basic crime-fighting equipment, drug dealers and other criminals are increasingly able to expand their own firepower by purchasing assault weapons. Too often, measures which would restrict such purchases fail because of the gun lobby's inability to distinguish between the interests of legitimate sportsmen and the serious problem of gun crimes in our society.

In Stockton, California, a disturbed individual fired over one-hundred rounds into a crowd of youngsters playing outside their elementary school in California. In an instant, he killed five innocent children and wounded nearly thirty others with an assault weapon he bought in Oregon by filling out a form under an assumed name. The Los Angeles City Council has now voted to ban such weapons, but cities cannot do the job alone. Gun dealers are already bragging that they will transfer their stock to stores outside the city limits. Only national legislation can stop the next drifter from Oregon who decides to vent a grudge against his California school.

Sales of assault weapons across the United States increased from 4,000 in 1985 and 1986 to over 40,000 last year. In the past few years, tens of thousands of assault weapons have entered the United States. Many of these guns wind up in the hands of drug dealers who use them against officers of the law and innocent bystanders. Jamaican drug traffickers have smuggled over 1,200 assault weapons to dealers in the North. Sophisticated firearms have been seized in more than half of all crack arrests.

The time is long past for Congress to enact legislation to ban the sale and transfer of assault weapons, while protecting the interests of law-abiding citizens. Until we tighten the controls on the sale of these and other dangerous weapons whose only use seems to be to kill human beings, the proliferation of assault weapons and the senseless violence they cause will continue.

Senator METZENBAUM. Thank you, Mr. Chairman. Mr. Chairman, at this point I would like to enter into the record a copy of a letter that I addressed to Mr. Baker on January 31, in which I have said that,

This legislation will not affect the sale or ownership of legitimate sporting weapons, such as hunting rifles and ordinary handguns. In an attempt to alleviate any concern to the contrary, I urge you to join me in crafting legislation that will protect the rights of law-abiding firearms owners and collectors.

I went on to say,

We welcome your input in this process and I look forward to cooperating with you on this matter.

Senator SIMON. Without objection, it will be entered in the record.

[The information of Senator Metzenbaum follows:]

HOWARD M. METZENBAUM  
OHIO

United States Senate  
WASHINGTON, DC 20510

COMMITTEE ON ENERGY AND  
NATURAL RESOURCES  
SUBCOMMITTEE ON ENERGY  
REGULATION AND CONSERVATION  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON ANTITRUST  
MONOPOLIES AND BUSINESS RIGHTS  
COMMITTEE ON LABOR AND HUMAN RESOURCES  
SUBCOMMITTEE ON LABOR

January 31, 1989

Mr. James Jay Baker  
National Rifle Association  
1600 Rhode Island Avenue, NW  
Washington, D.C. 20036

HAND DELIVERED

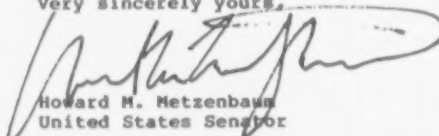
Dear Mr. Baker:

On Friday, February 10th, I intend to hold a hearing on legislation to place restrictions on the importation and sale of assault weapons. As you know, in 1986, the McClure-Volkmer Act banned the purchase of new machine guns and set up rigorous background checks and application procedures for the resale of machine guns already in circulation.

At present, I am working on legislation to apply these same restrictions to assault weapons such as the AK-47 used in the Stockton, California schoolyard killing. This legislation will not affect the sale or ownership of legitimate sporting weapons such as hunting rifles and ordinary handguns. In an attempt to alleviate any concern to the contrary, I urge you to join me in crafting legislation that will protect the rights of law-abiding firearm owners and collectors.

We are currently in consultation with firearm experts and law enforcement officials in an attempt to frame an appropriate proposal. We welcome your input in this process, and look forward to cooperating with you on this matter. I hope to hear from you very soon.

Very sincerely yours,



Howard M. Metzenbaum  
United States Senator

HMM/jj



Senator METZENBAUM. In response to that letter, I heard from Mr. Baker on February 2, in which he says—part of the letter reads:

The National Rifle Association will oppose attempts to ban or restrict semiautomatic firearms, firearms that have been available in this country for nearly a century, based on arbitrary distinctions \* \* \*

and, of course, it says a number of other things and I ask that that letter be included in the record.

Senator SIMON. It will be.

[The information of Senator Metzenbaum follows:]



NATIONAL RIFLE ASSOCIATION OF AMERICA  
INSTITUTE FOR LEGISLATIVE ACTION  
1600 RHODE ISLAND AVENUE, N.W.  
WASHINGTON, D. C. 20036

February 2, 1989

The Honorable Howard M. Metzenbaum  
140 Senate Russell Office Building  
Washington, D.C. 20510

HAND DELIVERED

Dear Senator Metzenbaum:

Thank you for your letter of January 31st, and for your invitation to testify at the February 10th hearing.

We view current proposals for bans or restrictions on semi-automatic rifles, shotguns, and pistols as seriously misguided -- especially in light of the Stockton tragedy. As you may be aware, the perpetrator of that heinous crime, Patrick Edward Purdy, had a seven-year history of involvement with the California criminal justice system. Despite six arrests for serious crimes, Purdy was able to avoid felony convictions through plea bargaining. Even Purdy's own 1987 probation report described him as a danger to himself and others. Yet this criminal was free to walk the streets of California, free to comply with and be certified by that state's background check and waiting period, and free eventually to murder five schoolchildren.

The failure of the criminal justice system in the Purdy case is, unfortunately, merely representative of widespread deficiencies in that system across the country. That is the real lesson of the Stockton crime.

The National Rifle Association will oppose attempts to ban or restrict semi-automatic firearms -- firearms that have been available in this country for nearly a century -- based on arbitrary distinctions. For the record, all so called "assault weapons" are legal for hunting in almost every state. Further, there is no technical difference between those firearms called "assault weapons" and those designated as "legitimate sporting weapons."

As an aside, you should be aware that the McClure-Volkmer Act did not "set up rigorous background checks and application procedures" for the purchase of fully-automatic firearms, as you stated in your letter. Those procedures have been in effect since enactment of the 1934 National Firearms Act. Those procedures were not enough to prevent gun control advocates from calling for a complete ban on the sale of newly-manufactured full-auto firearms.

We urge you to examine ways in which this country's abysmal efforts to deal with violent criminals can be improved. We look forward to presenting a detailed proposal for improving our criminal justice system at your February 10th hearing, and look forward to working with you on methods to improve that system.

Sincerely,

James Jay Baker  
Director  
Federal Affairs Division

Senator METZENBAUM. Let me first make an observation that when you talk about the constitutional right, all we are saying is compare semiautomatic assault weapons to the machineguns.

And if you argue that there is a constitutional right to bear a weapon, then I know that the NRA has indicated at one time that it was opposed to any restrictions with respect to machineguns, but then subsequently changed its position and has not fought that legislation.

So, I think that if you are going to have a constitutional question, you have to say, well, if you can restrict machineguns, then why can't you restrict something that is rather similar to a machinegun in its effectiveness.

I will get back to you, Mr. Baker.

Mr. BAKER. OK.

Senator METZENBAUM. I stand corrected. I am told by my staff that the NRA's position is that you want to legalize machineguns.

Mr. BAKER. We want to keep them restricted in the same fashion that they have been since 1934, Senator.

Senator METZENBAUM. But there was other legislation passed subsequent to that.

Mr. BAKER. That is correct, but that wasn't ours.

Senator METZENBAUM. I understand that.

Now, let me just ask you, Mr. Baker, do you think that there is any—can you honestly say there is any real use for a gun known as the Striker? I think it is called the street sweeper.

Mr. BAKER. Senator, I think I indicated before that we could do without street sweepers.

Senator METZENBAUM. Let me finish my question. This is a gun that is described as born in Rhodesia and improved in South Africa, really used for crowd control. Do you believe that people ought to be able to buy this kind of a gun?

Mr. BAKER. Senator, I think we can do without street sweepers, we can do without AK-47's, we can do without UZI's. The operative question is will that do anything to keep them out of the hands of criminals, and the answer is no.

Senator METZENBAUM. All right, let me go on. Let me read you some quotations from one of the authoritative texts describing weapons affected by my bill. From Jaynes Infantry Weapons—you would agree that that is an authoritative source?

Mr. BAKER. Yes, except they are referring to the selective fire versions and not the semiautomatic versions.

Senator METZENBAUM. Well, let me just read what they say. Listen to the description and tell me whether or not these are hunting weapons. The Striker 12, or street sweeper, you have already mentioned you are not supporting that. The AK-47:

It has been the standard rifle of the Soviet Army since the early 1950's. It was standard with all first-line units and is now also adopted by the Soviet Navy and Air Force ground troops. It has become the weapon of all the Eastern Bloc countries and most Communist countries elsewhere. Practically all Communist-inspired guerrilla and nationalist movements seem to be given stocks of them.

Wouldn't you agree, Mr. Baker, that we could ban the AK-47?

Mr. BAKER. Senator, the nomenclature you have just read describes the selective fire machinegun and those are already highly regulated. In fact, they are, in fact, banned from importation. So,

we are talking about an entirely different classification of firearms here other than you are describing.

Senator METZENBAUM. Well, the AK-47 is very much exactly like that weapon described by Jaynes.

Mr. BAKER. No, sir, it is not.

Senator METZENBAUM. Let me ask you, Mr. Baker, what is the need for legitimate hunters of deer and other game to buy magazines which hold more than 10 rounds of ammunition?

Mr. BAKER. Senator, once again, we don't need magazines of over 10 rounds. Nobody needs a particular size magazine. Nobody needs a particular firearm, but I thought the issue here today, at least it was in the letter that you sent me, was the Patrick Purdy incident.

Senator METZENBAUM. That isn't the only—

Mr. BAKER. How do we keep these out of the hands of criminals? You want to take them away from law-abiding people; we don't. We all want to keep them out of the hands of criminals. That is one thing we can agree on. How do we do that? Do we do that by banning a particular firearm? We don't believe so. That hasn't worked. There are 20,000 gun laws in this country and violent crime continues unabated.

Senator METZENBAUM. The fact is that you addressed yourself to the matter of limitations in connection with the magazines holding more than 10 rounds of ammunition, and I was sort of interested to see whether or not that would affect the hunters because that is not my intent.

Mr. BAKER. It depends on what you are hunting, Senator.

Senator METZENBAUM. Let me just finish, Mr. Baker. I will be very happy to have you respond.

I had my staff call gun stores in different parts of the country, Idaho, Georgia, Ohio, and Wyoming. Our survey indicated that a ranger with the Georgia Department of Natural Resources said that most hunters that used semiautomatic rifles used magazines of between five and eight rounds.

Mr. BAKER. That is correct.

Senator METZENBAUM. Rick from Rick's Gun Shop and Betty from Charlie's Gun Shop, both in Macon, GA, said that lever action rifles are the most popular hunting weapons they sell. When they do sell semiautomatic rifles, the average size of the magazine is five rounds.

Ike from Ike's Gun Shop in Idaho Falls, ID, said that 90 percent of his sales to hunters are bolt action rifles. He said when hunters do use semiautomatics, they most often use a five-round magazine.

And the clerk at Elbe Arms in Cheyenne, WY, said bolt actions are the most popular hunting weapons. He said semiautomatics are rarely used because of their unreliability in the cold weather. Hunters that do use semiautomatics usually use five-round magazines. And when we called Trader's Den in Zanesville, OH, they said that the hunters in Ohio do not use rifles with detachable magazines for hunting.

I think we have since learned that semiautomatic rifles are banned by law in Pennsylvania, and so I just would say to you—

Mr. BAKER. They are not banned by law in Pennsylvania, Senator.

Mr. KNOX. For hunting.

Senator METZENBAUM. Well, let me just see if that is the case. Mr. BAKER. They are limited as to hunting, but they are not banned in terms of possession.

Senator METZENBAUM. They are banned for hunting. Did I say banned generally?

Mr. BAKER. You said they are banned in the State of Pennsylvania.

Senator METZENBAUM. No; I stand corrected. Pennsylvania provides that it is unlawful for any person to hunt any game or wildlife with the use of a semiautomatic rifle or pistol.

In Arizona, the following devices and ammunition are prohibited for the taking of any wildlife: Semiautomatic center-fire rifles with a magazine capacity of more than five cartridges.

So, it appears that some States have been able to make the definition, have been able to make it stick. And what concerns me, Mr. Baker, is the proclivity or the inclination of the NRA to confuse all of the hunters in this country, the sportsmen of this country, that somehow this legislation would deprive them of their right to use the guns that they are presently using.

Mr. BAKER. We didn't write the legislation, Senator. You did, and that is why it is confusing.

Senator METZENBAUM. I offered to let you participate.

Mr. BAKER. And we offered to help in—

Senator METZENBAUM. The offer is still good.

Mr. BAKER. Senator, we will take you up on the offer if we are looking at how to control criminals and not law-abiding people.

Senator METZENBAUM. No, we are not looking at how to control criminals.

Mr. BAKER. Well, that is where we want to go.

Senator METZENBAUM. That is legislation I have worked on before. Senator Specter has worked on it; we all have. We are talking about—

Mr. BAKER. And so have we.

Senator METZENBAUM [continuing]. Banning the AK-47, the semiautomatic guns.

Mr. BAKER. We are not going to assist you to ban any firearms.

Senator METZENBAUM. Pardon?

Mr. BAKER. We are not going to assist you in attempting to ban any firearms.

Senator METZENBAUM. And you will confuse your membership across the country.

Mr. BAKER. Senator, the legislation is confusing. I didn't write it.

Senator METZENBAUM. I am not saying that you wrote it. [Laughter.]

You keep saying you want to help law enforcement.

Mr. BAKER. Yes, sir, we do.

Senator METZENBAUM. You tried to get the machinegun ban overturned.

Mr. BAKER. No, sir, we haven't.

Senator METZENBAUM. No; you are just saying you want to go back to the 1934 law.

Mr. BAKER. The 1934 law is currently in effect, Senator, and has been for over 50 years.



Senator METZENBAUM. Let me just read you what you said on August 15, 1986, about machineguns:

Repealing the machinegun amendment tacked on to the McClure-Volkmer bill will be a high priority, said the National Rifle Association Institute for Legislative Action Director, Wayne LaPier, Jr.

Mr. BAKER. That is not me. My name is Baker.

Senator METZENBAUM. Well, I understand that, but that is from your paper, isn't it? It is from the Monitor?

Mr. BAKER. I don't know. I can't see it from here. I can tell you that the 1934 act controlling machineguns has resulted in not one registered machinegun being used in a crime, and yet machineguns continued to be used in crime. Do you know why? Because the restrictions on law-abiding people apply to them only. They comply with the law and the criminals don't. That is the bottom line.

You can pass every law you want trying to regulate law-abiding citizens and criminals are going to continue to evade the law, by definition.

Senator METZENBAUM. Now, let me get it clear. You want to repeal the limitations in the law with respect to machineguns?

Mr. BAKER. No, sir.

Senator METZENBAUM. Well, then——

Mr. BAKER. We agree with the 1934 act restrictions.

Senator METZENBAUM. But not the 1986 restrictions?

Mr. BAKER. No, sir, because it doesn't do anything to lessen machinegun crime. It simply prevents those people, over 50 years, who have registered, provided fingerprints, background checks and waiting periods, and has done nothing to stop the criminals from misusing them.

Senator METZENBAUM. Mr. Baker, I want to say to you and to anybody else interested in this subject, we are prepared to work on definitions, we are prepared to cooperate. We are not prepared to talk about some other aspect of law enforcement entirely.

Mr. BAKER. Not the real problem.

Senator METZENBAUM. Well, that may be your opinion, but the overwhelming majority of Americans, I think, would disagree with you at this point.

Mr. BAKER. Well, I disagree, Senator.

Senator METZENBAUM. Thank you, Mr. Chairman.

Senator SIMON. We thank you for your appearance here.

The hearing stands adjourned.

[Whereupon, at 12:45 p.m., the subcommittee was adjourned.]



## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

## AMERICAN BAR ASSOCIATION

OFFICE OF THE PRESIDENT  
ROBERT D. RAVEN  
AMERICAN BAR CENTER  
750 N. LAKE SHORE DRIVE  
CHICAGO, ILLINOIS 60611  
TELEPHONE: 312/988-5109  
ABA/NET: ABA002

February 2, 1989

PLEASE REPLY TO:  
1800 M STREET, N.W.  
WASHINGTON, D.C. 20036

The Honorable Richard L. Thornburgh  
Attorney General  
U.S. Department of Justice  
10th and Constitution Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Attorney General:

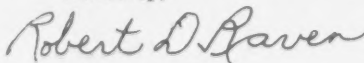
I am writing today regarding an issue of great importance. The use of a Soviet-designed AK-47 Assault Rifle in the slaying of five schoolchildren and the wounding of thirty others in Stockton, California has focused everyone's attention on a problem which our nation cannot afford to ignore. It is the growing civilian use of military assault weapons.

A glaring loophole in federal gun control laws has led to easy and widespread availability of weapons such as the AK-47, the Israeli-made Uzi machine gun and American-made AR-15. All these weapons were designed solely to conduct modern warfare and they have remarkable destructive capacities. Yet, they are sold legally in our country in a slightly modified form and are easily and cheaply converted back into their military assault forms.

The Anti-Drug Abuse Act (P.L. 100-690) as enacted November 18, 1988 includes a provision requiring the U.S. Attorney General to develop and implement a federal system to identify potential purchasers of handguns who are ineligible by federal law from owning firearms. We urge you to conduct the necessary study and swiftly complete your recommendations, and we specifically urge you to recommend a federal waiting period prior to the purchase of firearms. The American Bar Association has supported a waiting period so that background checks of prospective firearms purchasers can be made.

I am also asking our Criminal Justice Section to examine the issue of developing appropriate legislation to ban civilian access to military assault weapons, and I invite you to use them as a resource in your own efforts in this area.

Sincerely,



Robert D. Raven  
President

RDR/jet

4004A/42

OPENING REMARKS  
PRESS CONFERENCE  
FRIDAY, FEBRUARY 3, 1989  
ROBERT D. RAVEN  
PRESIDENT  
AMERICAN BAR ASSOCIATION

Today I would like to focus my opening remarks on two issues of critical importance to our nation.

The first issue is the alarming growth in gun-related violence. The use of a Chinese version of the Soviet AK-47 assault rifle in the slaying of five school children and wounding of 30 others in Stockton, California has focused national attention on the dangerous escalation in the sale and use of military assault weapons. This problem demands our immediate attention. Law enforcement officials have sounded the alarm that this high tech, remarkably destructive weaponry is increasingly finding its way into the hands of drug traffickers, especially in large metropolitan areas. A recent Time magazine article reports that purchases of the Chinese AK-47 imitation soared from 4000 in 1985-1986, to 40,000 last year. The Stockton incident and others show that this proliferation and use of military assault weapons is not confined to the drug trade.

A glaring loophole in federal gun control laws has created easy public availability of assault weapons. Under current law, automatic weapons such as the AK-47, the Israeli-made Uzi machinegun, and the U.S. made AR-15, can be sold if they are modified to be semi-automatic. These weapons remain highly destructive as modified, but even more disturbing, they can easily be converted back into their fully automatic form.

The time for the nation to act is now. Yesterday I sent a letter to the Attorney General urging him to institute a federal waiting period as part of his charge to develop and implement a system that prevents felons from buying these and other guns. I am also asking the ABA's Criminal Justice Section to examine the issue of appropriate legislation to ban civilian access to military assault weapons.

This problem is not going to go away on its own. After the Stockton incident, people flocked to gun shops to buy AK-47 look-alikes or other semi-automatic military weapons. Just last week, a gunman opened fire on 200 students at a Washington, D.C. school, wounding four. Our nation must take immediate action to put an end to such gun-related violence.

The second issue that I would like to discuss today is the miscarriage of justice occurring at the Legal Services Corporation Board. For many years, a majority of this Board have attempted to slash funding, to weaken by regulation and even to eliminate the legal services program. Their lame-duck status as directors unfortunately has not caused them to back away from this effort. Instead, in recent weeks, they have continued their attempts to disable this important, and now beleaguered, program. Despite strong support from Congress for legal services, this runaway Board has taken on itself to do what Congress repeatedly has said should not be done--to undermine the only program that ensures access to the justice system to millions of our poorest citizens.

I have previously described this group of LSC Board members as foxes guarding the chicken coop. Their recent activities underscore this point. I am calling on President Bush to move swiftly to appoint a new Board, one committed to the principles of the LSC Act. Justice and fairness for the nation's poor require no less.



COL. ROBERT E. SCHEETZ, CHIEF OF POLICE

## METROPOLITAN POLICE DEPARTMENT

CITY OF ST. LOUIS • 1200 CLARK AVENUE • ST. LOUIS, MISSOURI 63103

February 7, 1989

Senator Paul Simon  
 Sub-Committee on the Constitution  
 of the Senate Judiciary Committee  
 524 Dirksen  
 Washington, D.C. 20501

Dear Senator Simon:

I regret that I will not be able to attend the Senate Hearings concerning Semi-Automatic Assault Weapons being conducted on Friday, February 10, 1989, but my schedule will not allow me to leave my duties to the Department at this time.

As a law enforcement official I am troubled by the increasing misuse of these types of weapons. I have always supported and will continue to support any legislation that will protect the public from the sale of weapons which have no sporting value. The public and law enforcement community are facing an ever increasing danger from those persons who have used the current laws to purchase these type weapons which more and more are being modified and used to commit crimes of horrible proportion. The Brady Amendment and the ban on Teflon coated bullets are steps in the right direction, but even tighter controls are needed in the areas of semi-automatic and automatic weapons being made accessible to just anyone who wishes to purchase one.

I will continue to fight any legislation which will allow semi-automatic assault weapons to flourish unchecked and out of control, and give my whole-hearted endorsement to legislation prohibiting unqualified access to any weapons which have no sporting value or legitimate need for anyone to possess.

If I can be of any future help to you concerning this or similar matters, please do not fail to call upon me.

Sincerely,

Robert E. Scheetz  
 Colonel  
 Chief of Police

RES:sma

ROBERT G. TORRICELLI  
9TH DISTRICT, NEW JERSEY

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Congress of the United States  
House of Representatives  
Washington, DC 20515

STATEMENT

OF

CONGRESSMAN TORRICELLI

SUBMITTED TO

THE SUBCOMMITTEE ON CONSTITUTION

COMMITTEE ON THE JUDICIARY

U.S. SENATE

FEBRUARY 10, 1989



Mr. Chairman, I welcome the opportunity to join with you and the Subcommittee in focusing Congressional attention on the need to stem the sale and possession of deadly military-style assault guns.

Congress has been slow to consider legislation that would address this issue. Last summer, I attempted to offer an amendment to the Omnibus Drug Bill that would have given authority to the Department of Treasury to establish criteria to deny the importation of shotguns and rifles that were clearly not suitable for recreational purposes. Unfortunately, at that time, my amendment was not accepted as being in order.

Today, nothing could be more in order than the need to place limits on the unrestricted sale of military-style semiautomatic shotguns and rifles. Over the last few months, these assault weapons have been used to indiscriminately spray innocent bystanders on city streets with hundreds of bullets in a matter of seconds. In Washington, D.C., several high school students were wounded by a young man who was armed with a semiautomatic and upset over a girlfriend.

However, the event that has most recently riveted the nation's attention was the tragic killing of five school children in Stockton, California, as they played in a school yard. If the tragic death of these children and thousands of others can have any meaning, I believe that Congress should take decisive steps to restrict the future availability of military-style assault weapons that are specifically designed to be used by murderers and drug pushers in an urban environment. Two days ago, the National Conference of Mayors meeting on drugs and crime unanimously passed a resolution calling for a nationwide ban on assault weapons to help control the drug problem.

To accomplish this goal, earlier this month in the House of Representatives, I introduced H.R. 825, the Assault Weapon Violence Prevention Act of 1989. My bill would bar the sale of those semiautomatic shotguns and rifles that are military or paramilitary in style and design and used by murderers and drug pushers in an urban environment. It would not bar the continued possession of existing semiautomatics by their current owners as long as the weapons are not transferred to other individuals.

To distinguish between military-style assault weapons from lawful recreational semiautomatic shotguns and rifles, H.R. 825 sets up a point system that would assign points for the various components that make up each weapon (i.e., the length of barrel, the size of magazine, etc.) based on that component's function. Those semiautomatic weapons that receive a total number of points below a certain qualifying score would be banned. A similar system has been successfully and uncontroversially utilized for twenty years to ban the importation of cheap handguns.

To establish a workable point system and qualifying score, H.R. 825 would create a Federal-level Firearms Evaluation Panel composed of seven Federal and private firearms experts appointed from a range of perspectives by Secretary of Treasury with the advice and consent of the U.S. Senate. My legislation specifies that the firearms experts should represent the Bureau of Alcohol, Tobacco, and Firearms, the Defense Department, state and local law enforcement agencies, state and local hunting and game organizations, firearms manufacturers, and organizations opposed to firearms.

Assault weapon standards based on a point system would avoid requiring Congress to approve artful legislative definitions of assault weapons based on currently available models and give the Bureau of Alcohol, Tobacco, and Firearms the flexibility to respond to changes in weapon design and technology as they occur. Additionally, the panel of firearms experts, including those with hunting and game organization backgrounds, will ensure that any assault weapon standards developed by the Federal government protect the rights of the many hunters and sporting enthusiasts who do own and use semiautomatic shotguns and rifles for legitimate purposes.

I believe that the Assault Weapon Violence Prevention Act of 1989 would go a long way towards ending the growing wave of crime and stemming the rising tide of the weapons of the drug trade. Until now, Congress has been slow to act. However, it shouldn't be necessary for more children and innocent bystanders to die before we take action at the Federal level to ensure that these weapons are regulated.



100 Maryland Avenue, N.E.  
Washington, D.C. 20002  
Phone: 544-7190 or 7191

**national coalition to ban handguns**

February 10, 1989

**PRESS STATEMENT OF NATIONAL COALITION TO BAN HANDGUNS**

With public awareness of the easy availability of assault weapons growing and increased news reports of the assault weapons shooting in Stockton and a run on weapons there, the National Coalition to Ban Handguns has decided to put its highest legislative priority on the assault weapons ban. NCBH fully supports Senator Metzenbaum's bill.

Last year, the coalition polled its membership and its board of directors to see whether it should expand its program to include these high-powered rifles and other paramilitary guns. The result of those polls was an overwhelming "yes".

The recent surge in awareness has created an urgency to this goal. Michael K. Beard, Executive Director of the coalition said "It's a shame that we had to have such tragedies to spark public concern. At the risk of sounding opportunistic, we also know we have to strike while the iron is hot. And that generally only happens when there is an incident which causes an outcry and outrage."

The coalition is also working with Rep. Pete Stark (D-CA) who is expected to introduce an assault weapons ban in the next few weeks. Coalition members will be urged to encourage their representatives and senators to support the bill and help it through speedy passage.

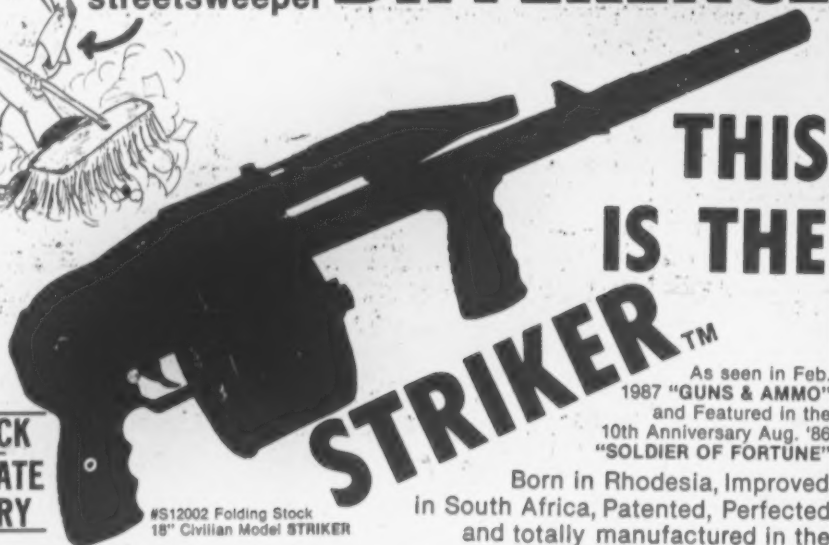
"This isn't the kind of issue where we can wait any longer," said Beard. "Every month of inaction, every week of delays can cost lives...lives of innocent children. We cannot stand by and do nothing."

The National Coalition to Ban Handguns is a coalition of 34 national religious, professional, medical and civic organizations with the goal of banning the future sale of handguns to private individuals. There would be exemptions for law enforcement and military, gun clubs and collectors.



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February 9, 1989

Subcommittee on the Constitution  
ATTENTION: Cheryl Matcho  
Judiciary Committee  
United States Senate  
524 Dirksen  
Washington, C.C. 20510

RE: Hearing on Semi-Automatic Firearms  
February 10, 1989

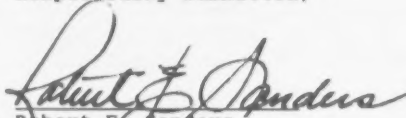
Honorable Members:

As the former Assistant Director, Criminal Enforcement, Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury, and as a life member of the International Association of Chiefs of Police I would like to submit my views on the semi-automatic firearms controversy. Having served twenty four years as a Special Agent enforcing the federal firearms laws, I know that they are adequate to combat the violence which the nation is experiencing. However, the laws can only be effective if they are applied within strategies targetting criminals.

My entire law enforcement career was spent with the Bureau of Alcohol, Tobacco and Firearms bringing to focus that agency's enforcement efforts against criminals and not against law abiding citizens who use and enjoy firearms for lawful purposes. A ban on the possession or transfer of semi-automatic firearms would only punish the sportsmen, sportswomen, and other good citizens of this country. Such a ban would do nothing to combat crime. Further, the various waiting period schemes would only divert scarce police resources away from criminal investigations and to waste them checking on millions of law abiding Americans who never have and never will misuse firearms.

Criminals are responsible for all violent crime and because we need the combined efforts of all Federal, state and local law enforcement to be concentrated on criminals, Congress should reject all proposals which would divert law enforcement from this overriding goal.

Respectfully submitted,

  
Robert E. Sanders



**GUN  
OWNERS  
OF AMERICA**



Testimony of Lawrence D. Pratt

Executive Director, Gun Owners of America

Against S.386, a Bill to Ban Rifles in America

Presented to the Subcommittee on the Constitution of the

Senate Judiciary Committee

February 10, 1989

Gun Owners of America, representing its 100,000 members, urges this committee to reject S.386.

This bill, which would ban most long guns in the country, removes any doubt that may have existed about the intentions of the gun control movement in America. The goal is disarmament of the American people in the face of a rising criminal assault that has been aided by federal and state elected officials who refuse to have justice meted out to murderers and other violent criminals.

Handgun Control, Inc. has long insisted that handguns were the only guns they did not like, and that "control" was all that they wanted. Then they supported a handgun ban in Maryland in 1988. In 1989, Handgun Control, Inc. has become more brazen, and is calling for the ban of most long guns.

Let there be no misunderstanding. S.386 will ban all semi-automatics that can accept any box magazine. A gun sold with a box magazine designed for three rounds will just as easily accept a magazine holding ten rounds. Just about the only long guns safe under S.386 would be double barreled shotguns and single shot rifles with no magazine capacity at all.

Senator Metzenbaum calls guns such as AK 47's "weapons of war." The Senator needs to be reminded that the second amendment was put into the Constitution so that the militia clause in Article I Section 8 could be effective. The framers saw that the Bill of Rights needed to include a right to keep and bear arms so that the individual citizens of the country would already be armed if called up into the active militia.

Dr. Gary Kleck, a Florida State University criminologist, has found that 1,000,000 Americans use a firearm each year to protect themselves against criminal attacks. One-third of those defenses are carried out with a long gun. That means that the same day that Patrick Purdy (who was a tragic reminder of the failure of our politicians to deal properly with criminals) was murdering children in Stockton, 2739 Americans were saving their lives and property because they had a handgun or a long gun available in their moment of need.

Patrick Purdy had a long criminal record, and the worst part of his record was the proof that our criminal justice system is a friend of criminals. At the same time our politicians are trying politicians and judges are setting dangerous criminals loose. Purdy's many brushes with the law for assault, burglary, and drugs managed to get plea bargained to slaps on the wrist.

Purdy's kindly treatment, by the same government that is now trying to disarm the American people, is the reason for his murder spree. The politicians who voted for the laws that permitted this are responsible for the dead people in Stockton. The judges and prosecutors who worked the system to let Purdy continue with his career of crime are also culpable.

In other words, the blood of the dead children is on the hands of many politicians, judges and prosecutors.

We should be having hearings on this great public scandal in the criminal justice system. Instead, we are here today to see how many more guns we can take away from the American people. Unless we ask the right questions, we will not get the right answers.

Senator Metzenbaum says that a waiting period to allow a record check would have kept Purdy from buying his weapons. That is not true. A record check would have found no felonies on Purdy's record. Purdy got gentler treatment from the criminal justice system than Senator Metzenbaum is willing to give to the American people who own guns. The American people need handguns and long guns alike to defend themselves against the criminal beneficiaries of a justice system gone berserk.

There are no statistics to show that AK 47's, or AR 15's, or any other gun are being used in a crime wave, whether or not Senator Metzenbaum and Handgun Control, Inc. like them. There are statistics to show that the politicians and the judges of America have refused to execute first degree murderers in all but a few cases. The Los Angeles policeman (mentioned by Senator Metzenbaum) who was killed by an AR 15 could just as easily have been killed by thousands upon thousands of other rifles using the same ammunition. Indeed, those same rifles could be adapted to accommodate magazines with over 10 rounds. The Los Angeles policeman was killed by a criminal who doubtless concluded from the nightly news that America is not serious about executing murderers.

Gun control is an unconstitutional infringement of the freedom to keep and bear arms which is enumerated in the Bill of Rights just as much as censorship is an infringement of free speech which is protected in another amendment. When Senator Metzenbaum is finished destroying the second amendment, perhaps

he will want to tell journalists which media outlets they may use for disseminating the news. He also might want to include a waiting period to let a government agency determine what they think is true before journalists are allowed to publish or broadcast their news. After all, there is a lot of bad news. Surely, Senator Metzenbaum, using the logic of gun control, could decide to reduce the quantity of news as a way to get rid of bad news. That makes just as much sense as reducing the number of guns to reduce the number of bad people.

Gun Owners of America asks this committee to reject S.386 and instead, consider legislation for applying the death penalty to all first degree murderers. In addition, the three time loser laws need to be put back on the books. Patrick Purdy would have been executed for being an incorrigible criminal if such laws had been applied. (If anyone finds this harsh, go tell it to the parents of Purdy's victims. Tell the parents that nothing should have been done to remove Purdy from society.) In a similar fashion, only judges who are committed to capital punishment for first degree murder should be appointed to the federal judiciary.

20619 DeForest Street  
Woodland Hills, CA. 91364  
February 11, 1989

The Honorable Senator Paul Simon  
United States Senate  
Washington, D.C. 20510

Dear Senator Simon:

Please accept this testimony from me in addition to that you have heard while presiding over a Senate panel concerning proposed and pending ban(s) on so-called "assault" rifles.

Semi-automatic firearms have been around for over a century and are used for all manner of sport, hunting, competition as well as defense. Alleged semi-automatic "assault" firearms are in principle no different than other semi-automatic firearms and are definitely not "machine guns," which are fully automatic.

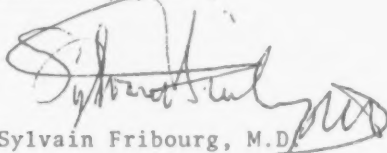
A ban on semi-automatic firearms, of any type, is pure political pabulum and public relations consistent with hypocrisy and avoidance of the real issue which is crime, criminals, murder, mayhem and other grievous assaults on human life by those beyond the pale.

Pass legislation against crime and criminals, but please do not pass legislation against the honest law-abiding citizen who enjoys the safe and legal pursuit and pastime of shooting semi-automatic firearms.

By the way, I do not own any so-called semi-automatic "assault" type weapon.

Legislation against semi-automatic weapons reminds one of the words of the philosopher Santayana, "those who cannot remember the past are condemned to repeat it," in that a similar noble experiment was once tried with ethanol, or alcohol. Let's fight crime, criminals and alcoholism, but not the legal enjoyment of savoring fine alcoholic beverages and fine firearms by honest law-abiding citizens.

Sincerely yours,



Sylvain Fribourg, M.D.



SEMI-AUTOMATIC FIREARMS AND THE SECOND AMENDMENT:

TESTIMONY ON S.386 AND H.R.669

by

Stephen P. Halbrook, Ph.D., J.D.\*

Subcommittee on the Constitution

Senate Committee on the Judiciary

February 10, 1989

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\*Attorney at Law, 10605 Judicial Dr., Suite B-3, Fairfax, Virginia, 22030, (703) 385-8610; Ph.D., Florida State University; J.D., Georgetown University. Former philosophy professor, Tuskegee Institute, Howard University, and George Mason University. Author of The Fourteenth Amendment and The Right to Keep and Bear Arms, The Right to Keep and Bear Arms: Report of the Subcommittee on the Constitution, Senate Judiciary Committee, 97th Cong., 2d Sess., 68-82 (1982); Tort Liability for the Manufacture, Sale, and Ownership of Handguns? 6 HAMLINE UNIV. LAW REVIEW 351-382 (1983); THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT (University of New Mexico Press 1984, reprinted by Liberty Tree Classics); To Keep and Bear Their Private Arms: The Adoption of the Second Amendment, 1787-1791, 10 NORTHERN KENTUCKY LAW REVIEW 13-39 (1982), reprinted in 131 CON. REC., 99th Cong., 1st Sess., S9105-9111 (July 9, 1985); The Right to Bear Arms in the First State Bills of Rights, 10 VERMONT LAW REVIEW 255-320 (1985); Bear Arms and Go To Jail, COMMUNITY FORUMS ON THE CONSTITUTION, 14 pp. (American Bar Association 1987); and Firearms, the Fourth Amendment, and Air Carrier Security, 52 JOURNAL OF AIR LAW AND COMMERCE 585-680 (1987).

SUMMARY OF TESTIMONY OF  
STEPHEN P. HALBROOK

Proposals to ban transfer and possession of semiautomatic firearms begin with defective nomenclature. By definition, none are "assault weapons," i.e., selective fire machineguns. The proposals characterize all repeating firearms as "semiautomatic," which actually refers only to self-loading repeaters. The ban would include most firearms of all kinds, and not just semiautomatics.

The sporting nature of semiautomatic firearms, including those with a cosmetic military appearance, are well known to the very agency which regulates importation. The Bureau of Alcohol, Tobacco and Firearms has approved import of the AKS and HK rifles, and the UZI pistol and carbine, based on its findings that they are "generally recognized as particularly suitable or readily adaptable to sporting purposes."

The Second Amendment right of the people to keep arms would be infringed by the proposed ban. The Second Amendment was prompted by British attempts to disarm the colonists. Proponents of the Constitution promised that the people could be armed, even with military weapons, and the Bill of Rights was adopted with the explanation that private arms are protected. Congress reaffirmed its support for the individual right to keep arms by legislation passed in 1941, when in Europe citizens were disarmed by police states, and again in 1986, with passage of the Firearms Owners' Protection Act. The U.S. Supreme Court has recognized that the Second Amendment protects arms which have militia uses, which would include semiautomatics.

I. SEMIAUTOMATIC FIREARMS ARE NOT ASSAULT WEAPONS,  
BUT ARE RECOGNIZED AS SUITABLE FOR SPORTING PURPOSES

A. NOMENCLATURE: "ASSAULT RIFLES" ARE  
FULL AUTOMATICS, NOT SEMIAUTOMATICS

No semiautomatic firearm is an "assault" weapon. Assault rifles are "selective fire," meaning that they constitute machineguns and are capable of firing automatically more than one shot, without manual reloading, by a single function of the trigger. In short, one may "select" either or full semiautomatic fire.

The official Department of Defense manual on Communist small arms, authored by Harold E. Johnson, the leading expert on the subject, states:

Assault rifles are short, compact, selective-fire weapons that fire a cartridge intermediate in power between submachinegun and rifle cartridges. Assault rifles have mild recoil characteristics and, because of this, are capable of delivering effective full automatic fire at ranges up to 300 meters.

The Soviet designed Kalashnikov AK-47 assault rifle . . . , a gas-operated, selective fire, box magazine-fed weapon, was the major infantry arm for most Eurasian Communist countries. The Warsaw Pact Armies, however, have generally replaced the AK-47 with the similar, but improved, AKM assault rifle . . . . The AK-47 remains in wide use in Asia and is still used as a substitute standard weapon in most Warsaw Pact Armies.<sup>1</sup>

The Bureau of Alcohol, Tobacco and Firearms (ATF) also recognizes the above nomenclature. In a letter to Senator Mark Hatfield dated Sept. 30, 1986, J. Michael Hudson, ATF Assistant Secretary, states:

Initially, [name deleted] has requested an explanation of the term "assault rifle" as used in describing AR-15 rifles. Generally, the term "assault rifle" covers a category of military-type weapons which are shoulder fired, use intermediate or high powered ammunition, and have selective fire capability. Selective fire refers to a weapon's ability to fire semiautomatically one shot for each function of the trigger or, at the option of the shooter, automatically more than one shot for each function of the trigger. The U.S. M-16 rifle is a common example of an "assault rifle."

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<sup>1</sup> Harold E. Johnson, SMALL ARMS IDENTIFICATION AND OPERATIONS GUIDE--EURASIAN COMMUNIST COUNTRIES at 105 (Department of Defense Intelligence Document 1980) (see Attachment #1 to this testimony).

Accordingly, any proposed legislation or newspaper reports which call a semiautomatic firearm an "assault weapon" are inaccurate. The outward appearance of a sporting semiautomatic firearm is completely unrelated to the internal machinegun mechanism characteristic of an assault weapon.

H.R. 669 (Berman) would prohibit transfer or possession of any "assault weapon," which is defined primarily as any firearm that is "semiautomatic" or accepts a magazine--i.e., virtually all firearms. "Any semiautomatic center fire rifle that accepts a detachable magazine with a capacity of 20 or more rounds of ammunition" means any rifle which accepts any detachable magazine, for the number of rounds a magazine holds is irrelevant to whether it is detachable. Similarly, a firearm with a barrel under 12" "originally designed to accept a magazine with a capacity of 20 or more rounds" includes any firearm with barrel under 12" with a magazine of any kind, because it is "designed" to accept a magazine of any size.

In ordinary language, a "semiautomatic" firearm is defined as follows: "A repeating firearm requiring a separate pull of the trigger for each shot fired, and which uses the energy of discharge to perform a portion of the operating or firing cycle (usually the loading portion)."<sup>2</sup>

By contrast, H.R. 669 provides: "The term 'semiautomatic', when used with respect to a weapon, means a weapon which fires a single projectile for each single pull of the trigger and employs a magazine." This simply eliminates the distinguishing feature of a true semiautomatic--that it is self-loading. In fact, under H.R. 669, any repeating firearm is a "semiautomatic" because every repeating firearm has a magazine, i.e., any device that holds one or more extra cartridges to be fed into the chamber.<sup>3</sup>

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<sup>2</sup> GLOSSARY OF ASSOCIATION OF FIREARM AND TOOL MARK EXAMINERS 3 (1985). By contrast, an "automatic" firearm is defined as follows: "A firearm design that feeds cartridges, fires and ejects cartridge cases as long as the trigger is fully depressed and there are cartridges available in the feed system. Also called FULL AUTO and MACHINE GUN." Id. at 2.

<sup>3</sup> See id. at 82.

**B. RECOGNITION OF SPORTING DESIGN OF SEMI-AUTOMATICS WITH AN OUTWARD MILITARY APPEARANCE BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**

Semiautomatic redesigns of such firearms as the AK-47 and the UZI are approved for importation by the Bureau of Alcohol, Tobacco and Firearms because these semiautomatics are "generally recognized as particularly suitable for or readily adaptable to sporting purposes" as provided in 18 U.S.C. Section 925(d)(3). The only similarity is in outward appearance, as the internal mechanisms of the semiautomatics are completely redesigned to prevent conversion to full automatic or selective fire.

The "sporting purposes" test was first enacted in the Gun Control Act of 1968. A Senate report explained: "The provisions concerning the importation of firearms would not interfere with the bringing in of currently produced firearms, such as rifles, shotguns, pistols, or revolvers of recognized quality which are used for hunting and for recreational purposes, or for personal protection."<sup>4</sup> Further, Congress recommended that the Treasury Department set up a panel of experts to obtain guidance to set a sporting criteria:

It is recommended that the Secretary establish a council that would provide guidance and assistance to him in determining those firearms which meet the criteria for importation into the United States. Such a council could include representatives of government, firearms industry, including firearms importers, the sporting fraternity, and firearms research organizations, designated by the Secretary.<sup>5</sup>

Treasury appointed a Firearms Advisory Panel, which initially met on Dec. 10, 1968. Its minutes reflect: "It was generally agreed that firearms designed and intended for hunting and all types of organized competitive target shooting would fall within the sporting purposes category."<sup>6</sup> The Panel

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<sup>4</sup> Senate Report 1097, 90th Cong., 2d Sess., in U.S. Code & Cong. & Admin. News 1968, at 2167.

<sup>5</sup> Senate Report 1501, 90th Cong., 2d Sess., 24 (1968).

<sup>6</sup> Memorandum to File: Firearms Advisory Panel, FOIA record disclosed by ATF, at 2. See Attachment #2.



specifically considered semiautomatic rifles which had the outward, cosmetic appearances of military rifles, and found:

A model BM59 Beretta, 7.62mm NATO Caliber Sporter Version Rifle was presented to the panel and their advice sought as to their suitability for sporting purposes. It was the consensus that these rifles do have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of this rifle together with the SIG-AMT 7.62mm NATO Caliber Sporting Rifle and the Cetme 7.62mm NATO Caliber Sporting Rifle be authorized for importation.<sup>7</sup>

Accordingly, from the beginning the agency recognized that high quality semiautomatic rifles which may look like machineguns but internally have been completely redesigned, are particularly suitable for and readily adaptable to sporting purposes. In addition, in 1968 Treasury adopted the following which is the only regulation it has ever adopted on sporting criteria:

The Director may compile an Importation List of firearms and ammunition which he determines to be generally recognized as particularly suitable for or readily adaptable to sporting purposes. . . . No firearm shall be placed on the Importation List unless it is found that:

(1) the caliber or gauge of the firearm is suitable for use in a recognized shooting sport,

(2) the type of firearm is generally recognized as particularly suitable for or readily adaptable to such use, and

(3) the use of the firearm in a recognized shooting sport will not endanger the person using it due to deterioration through such use or because of inferior workmanship, materials or design.<sup>8</sup>

Semiautomatic rifles, without regard to the outward appearance, have generally been considered by the Bureau of Alcohol, Tobacco and Firearms as meeting the above sporting criteria. First, the calibers of perhaps most of these rifles are .30 or .223. .30 caliber is the most popular caliber for deer hunting and for center fire rifle competition. Cartridges include .30.'06, .308 (7.62 NATO), 7.62x39 (used in the AK-47), and .30-30. .223 caliber ammunition is used in AR-15 rifles and similar rifles for matches and for long range varmint hunting.

<sup>7</sup> Id. at 3.

<sup>8</sup> 27 C.F.R. Section 178.112(c). While the regulation was deleted in 1986 (51 F.R. 39622), no other criteria has been published as a regulation.

The second criterion above, that "the type of firearm" is sporting, is met in the case of semiautomatic rifles, pistols, and shotguns generally. Both industry standards and ATF regulations and forms refer to several "types" of firearms.<sup>9</sup> The ATF form for Title I firearms indicates: "TYPE (Pistol, Revolver, Rifle, Shotgun, etc.)";<sup>10</sup> the form for Title II firearms indicates: "TYPE OF FIREARM (shortbarreled rifle, machine gun, destructive device, etc.)."<sup>11</sup> Thus, longbarreled rifles and shotguns fit the "type" criterion for sporting use. Some ATF forms use the terms "type of action." Types of actions include full automatic, bolt, lever, revolver, semiautomatic, and slide.<sup>12</sup>

The third ATF criterion for sporting use states that the firearm must be of sufficient workmanship so as not to injure the user in the shooting sports. Again, cosmetic looks are irrelevant to this feature. Such rifles as the AKS (the semiautomatic version of the AK-47) and the AR-15 are made of quality materials and have safe and proven designs. The state of product liability law in the United States today more than adequately polices firearms manufacturers and importers as to safe, workmanlike materials and designs.

As noted, the Firearms Advisory Panel met in 1968 to establish a sporting criteria. As applied to long guns, the Panel's concern, which ATF has utilized, was that semiautomatics not be easily convertible to full automatics. This has resulted in the complete internal redesign of semiautomatics with an outward military appearance such as the HK, UZI, and AKS before approval by ATF for importation as sporting. The other sporting

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<sup>9</sup> "Each licensed manufacturer shall record the type, model, caliber or gauge, and serial number of each complete firearm manufactured . . . ." 27 C.F.R. Sec. 178.123(a).

<sup>10</sup> ATF Form 4473, line 11.

<sup>11</sup> ATF Form 2, line 4.

<sup>12</sup> GLOSSARY OF THE ASSOCIATION OF FIREARM AND TOOL MARK EXAMINERS at 2-3 (1985).

criteria for long guns utilized since 1968 by ATF are the length requirements--16" barrel and 26" overall length for rifles, and 18" barrel and 26" overall length for shotguns.

The Panel devised, and ATF developed, a detailed Factoring Criteria for Pistols and Revolvers, ATF Form 5330.17. By imposing minimum height, and by rewarding "weapon weight with magazine" and "magazine safety" (which assumes a detachable magazine), this ATF form is based on the assumption that larger, detachable magazines enhance sporting use.

The only other criterion published by ATF on sporting use is its rulings that true semiautomatic design in itself is a sporting design. In these rulings, ATF has opined that internal mechanisms which are easy to convert to full automatic are "machinegun design features . . . not normally found in the typical sporting firearm."<sup>13</sup>

Since 1968, ATF has apparently administered the sporting criteria as applied to rifles consistent with the mandate of Congress. For example, by letter dated Jan. 3, 1973, ATF approved for import the Heckler & Koch rifles which are today identified as the Models 91 and 93:

These rifles were examined by members of our staff and it was found that they are capable of semiautomatic fire only and cannot be readily converted to fire fully automatic. Further, the receivers were of a different design than those receivers utilized in the manufacture of the Heckler and Koch machine gun.

Therefore, the Heckler and Koch rifles . . . qualify for importation as rifles suitable for sporting purposes . . .<sup>14</sup>

Similarly, by letter dated January 25, 1980, Edward M. Owen, Jr., Chief, ATF Firearms Technology Branch, found that the UZI carbine met the sporting test for importation as follows:

This refers to the sample UZI semiautomatic carbines . . . which were recently submitted to this office for evaluation as to their classification under the provisions of the Gun Control Act of 1968.

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<sup>13</sup> E.g., ATF Rul. 83-5, AFTB 1983-3, 35.

<sup>14</sup> See Attachment #3.

Examination of the submitted samples indicate that the above carbines have been designed and manufactured as semiautomatic weapons. Testing of the carbines further indicates that they fire only in the semiautomatic mode and cannot be easily converted to fire fully automatically. Additionally the receivers of the carbines, although bearing a strong external resemblance to the UZI submachinegun, differ considerably in internal design and construction.

Therefore, as a result of our examination and testing of the various samples submitted over the past year the above described UZI semiautomatic carbines are classified as being firearms as that term is defined in Section 921(a)(3) of Title I of the Gun Control Act of 1968. These firearms are not subject to any of the provisions of the National Firearms Act provided that they have barrels in excess of 16 inches in length and an overall length of at least 26 inches with the folding stock extended.

Semiautomatic UZI carbines which are identical in design and construction to the submitted samples may be imported for commercial resale.<sup>15</sup>

The current ATF director, Stephen E. Higgins, was appointed Acting Director in 1982 and Director in 1983. Mr. Higgins has continued to administer the importation requirements as applied to rifles consistently with Congressional intent. For example, by letter dated January 25, 1983, Mr. Owen, the Chief of the ATF Firearms Technology Branch, found that the "UZI semiautomatic pistol in caliber 9mm parabelium . . . accrues a qualifying score of 129 points on ATF Form 4590, Factoring Criteria for Weapons. . . . Based on our examination, the UZI semiautomatic pistol as described above is suitable for importation as a sporting purpose firearm."<sup>16</sup> Similarly, in 1984, and to date, also in Mr. Higgins' administration, ATF has approved for importation as sporting the AKS semiautomatic rifle. While having the outward appearance of an AK-47 assault (selective fire) rifle, the internal mechanism of the AKS is completely redesigned to meet ATF's exacting standards that it not be easily convertible to full automatic.

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<sup>15</sup> See Attachment #4.

<sup>16</sup> See Attachment #5.

Although domestic manufacturers are not subject to separate sporting criteria as are importers,<sup>17</sup> in 1986 ATF Deputy Director William T. Drake had occasion to refer to the Colt AR-15 semiautomatic Sporter rifle as an accurate "sporting 5.56mm rifle" which is in "use in military and civilian rifle match competition."<sup>18</sup>

This is not to say that ATF's administration of the import provision has always been fair. Complaints were made in 1971 hearings that single shot, international match pistols (such as are used in the Olympic games) were excluded from import due to the inflexible application of the Factoring Criteria.<sup>19</sup> In 1986, ATF rejected importation of the Universal Sporting Automatic Shotgun (USAS-12), a 12 gauge semiautomatic shotgun. ATF opined that this 12 pound shotgun is too heavy for sporting use for all sportsmen, regardless of strength, even though the shotgun has no "kick" and 10 gauge semiautomatic shotguns weigh the same. The USAS-12 has a box magazine, which is safer and less prone to accidents in the loading/unloading process than the tubular magazines on most semiautomatic and pump shotguns. Despite such aberrations, ATF has otherwise apparently administered the import provisions as applied to most rifles and shotguns consistent with the statutory mandate that a firearm be "generally recognized as particularly suitable for or readily adaptable to sporting purposes."

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<sup>17</sup> Of course, semiautomatics and other Title I firearms are considered sporting per se. *United States v. Biswell*, 406 U.S. 311, 313 n.2 (1972) ("sporting weapons as defined in 18 U.S.C. Section 921.")

<sup>18</sup> Letter of William T. Drake, ATF Deputy Director, October 27, 1986, and related correspondence.

<sup>19</sup> "Examples of international match pistols excluded from importation into the United States under the factoring criteria established by the ATFD, IRS, are the Hammerli Model 106 and 107 (.22 caliber long rifle Martini-type single-shot handguns) and the Hammerli Model 120 (single shot with side-lever action). These pistols do not have a positive manually operated safety device which is mandatory under the factoring criteria." "SATURDAY NIGHT SPECIAL" HANDGUNS, S. 2507, Hearings Before the Subcommittee to Investigate Juvenile Delinquency, Senate Judiciary Committee, 92nd Cong., 1st Sess., 329 (1972).



Proposals that deny the sporting purposes of semiautomatic firearms based solely on an outward, cosmetic appearance contradict the long-standing Congressional mandate and administrative interpretations, not to mention the preferences of sportsmen expressed in the marketplace. True semiautomatic designs are sporting per se, and lack of selective fire capacity precludes classification of these sporting firearms as assault weapons.

II. A BAN ON POSSESSION OR TRANSFER OF SEMIAUTOMATIC  
FIREARMS WOULD INFRINGE ON THE SECOND AMENDMENT  
RIGHT OF THE PEOPLE TO KEEP ARMS

The Second Amendment to the U.S. Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed ." The following demonstrates that the Second Amendment was prompted in part by British attempts to ban private possession and transfer of firearms, and that Congress adopted, and the States ratified, the Second Amendment as an individual right so that the people could retain a balance of power with government, which has the potential for oppression. Congress reaffirmed its support for the Second Amendment right of individual possession of firearms, including firearms which are useful for militia purposes, by the passage of legislation in 1941 and 1986. Finally, the U.S. Supreme Court has upheld the right to keep and bear firearms which could have militia uses.

A. VIOLATION OF THE RIGHT TO  
KEEP ARMS BY THE BRITISH

Second Amendment rights were enumerated because the Framers recalled how the British sought to deprive the colonists of their private arms. Just as the British troops were about to begin the occupation of Boston in 1768, a patriot (possibly Samuel Adams) wrote in the Boston Gazette, the most influential patriot newspaper in the colonies:

It is reported that the Governor has said, that he has Three Things in Command from the Ministry, more greivous to the People, than any Thing hitherto made

known. It is conjectured 1st, that the Inhabitants of this Province are to be disarmed. 2d. The Province to be governed by Martial Law. And 3d, that a Number of Gentlemen who have exerted themselves in the Cause of their Country, are to be seized and sent to Great-Britain.

Unhappy Americal! When thy Enemies are rewarded with Honors and Riches; but thy Friends punished and ruined only for asserting thy Rights, and pleading for thy Freedom.<sup>20</sup>

The military occupation occurred after the citizens of Boston voted in a town meeting to require all citizens to obtain arms. Samuel Adams defended the right to keep arms in a 1769 article as follows:

At the revolution [of 1689], the British constitution was again restor'd to its original principles, declared in the bill of rights; which was afterwards pass'd into a law, and stands as a bulwark to the natural rights of subjects. "To vindicate these rights, says Mr. Blackstone, when actually violated or attack'd, the subjects of England are entitled first to the regular administration and free course of justice in the courts of law--next to the right of petitioning the King and parliament for redress of grievances--and lastly, to the right of having and using arms for self-preservation and defence." These he calls "auxiliary subordinate rights, which serve principally as barriers to protect and maintain inviolate the three great and primary rights of personal security, personal liberty and private property": And that of having arms for their defense he tells us is "a public allowance, under due restrictions, of the natural right of resistance and self-preservation, when the sanctions of society and laws are found insufficient to restrain the violence of oppression."--How little do those persons attend to the rights of the constitution, if they know anything about them, who find fault with a late vote of this town, calling upon the inhabitants to provide themselves with arms for their defence at any time; but more especially, when they had reason to fear, there would be a necessity of the means of self preservation against the violence of oppression.<sup>21</sup>

Between 1768 and 1775, the British resorted to every possible measure to deprive the Americans of arms. In 1774, the Crown-appointed counsellors of Boston considered banning possession of arms by the people, leading to widespread protests:

It is said, it was proposed in the Divan last Wednesday, that the inhabitants of this Town should be disarmed, and that some of the new-fangled Counsellors

<sup>20</sup> Boston Gazette, Sept. 26, 1768, at 3, cols. 1-2. On the influence of this newspaper, see S. Korbe, THE DEVELOPMENT OF THE COLONIAL NEWSPAPER 118-20 (1960).

<sup>21</sup> Boston Gazette, Feb. 27, 1769, at 3, col. 1, reprinted in 1 H. Cushing ed., THE WORKS OF SAMUEL ADAMS 316 (1904).

consented thereto, but happily a majority was against it.--The report of this extraordinary measure having been put in Execution by the Soldiery was propagated through the Country, with some other exaggerated stories, and, by what we are told, if these Reports had not been contradicted, we should by this date have had 40 or 50,000 men from the Country (some of whom were on the march) appear'd for our Relief.<sup>22</sup>

But the British did seize private arms, as the address from the County of Worcester to General Gage made clear: "This County are constrained to observe, they apprehend the People justified in providing for their own Defense, while they understood there are no passing the Neck without Examination, . . . and many Places searched, where Arms and Ammunition were suspected to be; and if found, seized . . . ." <sup>23</sup> In fact, seizing the people's arms was seen as even worse than infringing on their right to assembly: "But what most irritated the People next to seizing their Arms and Ammunition, was the apprehending six gentlemen, select men of the town of Salem, who had assembled a town meeting . . . ." <sup>24</sup>

The British also imposed an embargo on importation of arms and ammunition into the American colonies. Edmund Burke pointed out in debates in Parliament in 1775 that such injustices had been tried before in Wales:

Sir, during that state of things, parliament was not idle. They attempted to subdue the fierce spirit of the Welsh by all sorts of rigorous laws. They prohibited by statute the sending all sorts of arms into Wales, as you prohibit by proclamation (with something more of doubt on the legality) the sending arms to America. They disarmed the Welsh by statute, as you attempted, (but still with more question on the legality) to disarm New England by an instruction. They made an Act to drag offenders from Wales into England for trial, as you have done (but with more hardship) with regard to America.<sup>25</sup>

The Declaration of Causes of Taking up Arms of 1775, passed by the Continental Congress, complained that General Gage tricked the citizens of Boston into surrendering their arms (allegedly

<sup>22</sup> Massachusetts Spy, Sept. 8, 1774, at 3, col. 3.

<sup>23</sup> Boston Gazette, Oct. 17, 1774, at 2, cols. 2-3.

<sup>24</sup> *Id.*, Dec. 5, 1774, at 4, col. 1.

<sup>25</sup> 18 COBBETT, PARLIAMENTARY HISTORY OF ENGLAND 512 (1813).

for temporary "safekeeping") with their own magistrates, and then had his Redcoats seize the arms, which included muskets, pistols, and blunderbusses.<sup>26</sup> Gage's disarming of the people of Boston was widely reported in colonial newspapers and clarified for all patriots Gage's tyrannical designs. One report stated that "the Governor and gentlemen of Boston have agreed to open the town, on condition of the inhabitants delivering up their arms to the Selectmen."<sup>27</sup> A patriot wrote from Roxbury: "Gage and his troops are immured within the walls of Boston; and . . . our friends are entrapped by them:--We have some hope they will be liberated this day; Gen. Gage has proposed, upon their surrendering their arms, that they may march out; they surrendered their arms yesterday."<sup>28</sup>

After collecting their arms, Gage refused to allow the people to leave Boston. It was reported from New London: "By the post, who left the head quarters at Roxbury, last Monday o'clock P.M. we learn that only two persons have been permitted to come out of Boston that day, that no more of the inhabitants would be permitted to leave the town for the present; and that on the same day a town meeting was to be held in Boston, when the inhabitants were determined to demand the arms they had deposited in the hands of the Selectmen, or have liberty to leave the town."<sup>29</sup>

Meanwhile British troops began plundering houses in Boston,<sup>30</sup> and Gage proclaimed martial law, ordering the rebels to surrender their arms.<sup>31</sup> The following is a typical patriot's response:

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<sup>26</sup> See S. Halbrook, *THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT* 59-60 (1984).

<sup>27</sup> *Pennsylvania Evening Post* (Philadelphia), May 2, 1775, at 2, col. 2.

<sup>28</sup> *Id.*, May 9, 1775, at 3, col. 2.

<sup>29</sup> *Id.*, May 20, 1775, at 3, cols. 1-2.

<sup>30</sup> *Id.*, May 25, 1775, at 2, col. 1.

<sup>31</sup> *Id.*, June 24, 1775, at 2.

What terms do you hold out in this gracious proclamation? . . . Now, Sir, waving all that may be said of your hypocrisy, cruelty, villainy, treachery, perfidy, falsehood, and inconsistency, are you not ashamed to throw out such an insult upon human understanding, as to bid people disarm themselves till you and your butchers murder and plunder them at pleasure! We well know you have orders to disarm us, and what the disposition of the framers of these orders is, if we may judge from the past, can be no secret.<sup>32</sup>

The inhabitants of the other colonies feared the same treatment, because it was widely reported "that on the landing of the general officers, who have sailed for America, a proclamation will be published throughout the provinces inviting the Americans to deliver up their arms by a certain stipulated day; and that such of the colonists as are afterwards proved to carry arms shall be deemed rebels, and be punished accordingly."<sup>33</sup>

In 1777, William Knox, Undersecretary of State in the British Colonial Office, circulated a proposal entitled "What is Fit to be Done with America?" Besides a ruling aristocracy loyal to the Crown, establishment of the Church of England, and an unlimited power to tax, Knox offered the panacea of disarming all of the people:

The Militia Laws should be repealed & none suffered to be re-enacted, & the Arms of all the People should be taken away, & every piece of Ordnance removed into the King's Stores, nor should any Foundry or manufactory of Arms, Gunpowder, or Warlike Stores, be ever suffered in America, nor should any Gunpowder, Lead, Arms or Ordnance be imported into it without Licence; they will have but little need of such things for the future, as

<sup>32</sup> E. Ludlow, "To the Vilest Tool of the most profligate and tyrannical Administration that ever disgraced a Court. Inhuman Butcher!" *Id.*, June 27, 1775, at 1, cols. 1-2.

A further editorial on Gage's proclamation stresses that an armed populace must keep government in check. "A Freeman," *id.* at 2, cols. 1-2 states:

The opposing an arbitrary measure, or resisting an illegal force, is no more rebellion than to refuse obedience to a highway-man who demands your purse, or to fight a wild beast, that came to devour you. It is morally lawful, in all limited governments, to resist that force that wants political power, from the petty constable to the king. . . . They are rebels who arm against the constitution, not they who defend it by arms.

<sup>33</sup> Virginia Gazette, June 24, 1775, at 1, col. 1.



the King's Troops, Ships & Ports will be sufficient to protect them from any danger.<sup>34</sup>

B. THE INTENT OF THE FRAMERS OF THE SECOND AMENDMENT

When the Constitution was proposed in 1787 without a Bill of Rights, the federalists argued that one was unnecessary, since Congress had no enumerated power to control rights such as a free press and bearing arms. In The Federalist No. 29, Alexander Hamilton wrote that the government should not require

the great body of yeomanry and of the other classes of citizens to be under arms for the purpose of going through military exercises and evolutions, as often as might be necessary to acquire the degree of perfection which would entitle them to the character of a well regulated militia. . . .

Little more can reasonably be aimed at with respect to the people at large than to have them properly armed and equipped. . . .

. . . This will not only lessen the call for military establishments, but if circumstances should at any time oblige the government to form an army of any magnitude that army can never be formidable to the liberties of the people while there is a large body of citizens, little if at all inferior to them in discipline and the use of arms, who stand ready to defend their rights and those of their fellow citizens.<sup>35</sup>

In The Federalist, No. 46, James Madison, in contending that "the ultimate authority . . . resides in the people alone,"<sup>36</sup> predicted that encroachments by the federal government would provoke "plans of resistance" and an "appeal to a trial of force."<sup>37</sup> To a regular army of the United States government "would be opposed a militia amounting to near half a million citizens with arms in their hands." Alluding to "the advantage of being armed, which the Americans possess over the people of almost every other nation," Madison continued, "Notwithstanding the military establishments in the several kingdoms of Europe,

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<sup>34</sup> 1 SOURCES OF AMERICAN INDEPENDENCE 176 (H. Peckham ed. 1978).

<sup>35</sup> Madison, Hamilton, and Jay, THE FEDERALIST PAPERS 184-85 (Arlington House ed. n.d.)

<sup>36</sup> Id. at 294.

<sup>37</sup> Id. at 298.

which are carried as far as the public resources will bear, the governments are afraid to trust the people with arms."<sup>38</sup> If the people were armed and organized into militia, "the throne of every tyranny in Europe would be speedily overturned in spite of the legions which surround it."<sup>39</sup>

In fact, the Founding Fathers were even more explicit in insisting that American citizens would be able to possess military-type small arms. Noah Webster, the influential federalist whose name still appears on dictionaries, stated: "Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, and constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States."<sup>40</sup> Similarly, Tench Coxe, a friend of James Madison and a tireless federalist, wrote:

The power of the sword, say the minority of Pennsylvania, is in the hands of Congress. My friends and countrymen, it is not so, for THE POWERS OF THE SWORD ARE IN THE HANDS OF THE YEOMANRY OF AMERICA FROM SIXTEEN TO SIXTY. The militia of these free commonwealths, entitled and accustomed to their arms, when compared with any possible army, must be tremendous and irresistible. Who are the militia? are they not ourselves. Is it feared, then, that we shall turn our arms each man against his own bosom. Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birth-right of an American. . . . [T]he unlimited power of the sword is not in the hands of either the federal or state governments, but, where I trust in God it will ever remain, in the hands of the people.<sup>41</sup>

The antifederalists insisted that these promises be made in writing. Insisting on a Bill of Rights, Richard Henry Lee wrote that "to preserve liberty, it is essential that the whole body of

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<sup>38</sup> *Id.* at 299.

<sup>39</sup> *Id.* at 300.

<sup>40</sup> N. Webster, An Examination into the Leading Principles of the Federal Constitution (1787), in PAMPHLETS ON THE CONSTITUTION OF THE UNITED STATES 56 (P. Ford ed. 1888).

<sup>41</sup> Pennsylvania Gazette, Feb. 20, 1788, in 2 DOCUMENTARY HISTORY OF THE CONSTITUTION OF THE UNITED STATES (Mfm. Supp.) 1778-80 (Jensen ed. 1976).

the people always possess arms, and be taught alike, especially when young, how to use them . . . ."42 The Supreme Court recently noted:

The remarks of Richard Henry Lee are typical of the rejoinders of the Antifederalists. . . . The concerns voiced by the Antifederalists led to the adoption of the Bill of Rights. . . .

The fears of the Antifederalists were well founded.<sup>43</sup>

When James Madison proposed the Bill of Rights in 1789, he wrote that the proposed amendments concerning the press and arms "relate first to private rights . . . ."44 Ten days after its introduction, federalist leader Tench Coxe wrote of what became the Second Amendment: "As civil rulers, not having their duty to the people duly before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms."<sup>45</sup> Madison endorsed Coxe's analysis, which was reprinted without contradiction.<sup>46</sup> In fact, what became the Second Amendment was seen as embodying the proposal drafted by Samuel Adams, "that the said constitution be never construed to authorize congress . . . to prevent the people of the United States, who are peaceable citizens, from keeping their own arms . . . ."47

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<sup>42</sup> R. Lee, ADDITIONAL LETTERS FROM THE FEDERAL FARMER 170 (1788).

<sup>43</sup> Minneapolis Star v. Minnesota Com. of Rev., 460 U.S. 575, 584 (1983).

<sup>44</sup> 12 MADISON PAPERS 193-194 (Rutland ed. 1979).

<sup>45</sup> "Remarks on the First Part of the Amendments to the Federal Constitution," Federal Gazette, June 18, 1789, at 2, col. 1.

<sup>46</sup> See 12 MADISON PAPERS at 239-40, 257 (1979).

<sup>47</sup> Independent Gazetteer (Philadelphia), Sept. 9, 1789, at 2, col. 2.

St. George Tucker, the first major commentator on the Bill of Rights,<sup>48</sup> explained the Second Amendment as follows: "The right of self-defense is the first law of nature . . . . Wherever . . . the right of the people to keep and bear arms is, under any color or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction."<sup>49</sup>

C. REAFFIRMATION OF THE SECOND AMENDMENT  
BY CONGRESS IN THE TWENTIETH CENTURY

From the time the Second Amendment was adopted by Congress in 1789 and ratified by the states in 1791, little controversy surrounded the right to keep and bear arms. Other than requiring all able-bodied males to acquire and keep militia arms, Congress passed nothing on firearms until the twentieth century.

In 1934, Congress passed the National Firearms Act, a comprehensive taxation and registration system for machineguns, shortbarreled shotguns and rifles, and certain other firearms. Proponents of this legislation recognized that Congress could not ban possession of such firearms due to its limited powers under Art. I, Sec. 8 of the Constitution and the Second Amendment, and thus opted for the taxation scheme.<sup>38</sup>

Again, in 1938, Congress passed the Federal Firearms Act, which regulated interstate commerce in firearms and prohibited possession of firearms by felons where an interstate nexus could be demonstrated.

In 1941, less than two months before Pearl Harbor, Congress enacted legislation to authorize the President to requisition broad categories of property with military uses from the private

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<sup>48</sup> New York Times v. Sullivan, 376 U.S. 254, 296-97 (1964).

<sup>49</sup> 1 Tucker, BLACKSTONE'S COMMENTARIES (Appendix) 300 (1803). Henry St. George Tucker, another major commentator, wrote that "the right of bearing arms" was one of the "protections or barriers [which] have been erected which serve to maintain inviolate the three primary rights of personal security, personal liberty, and private property." 1 Tucker, COMMENTARIES ON THE LAWS OF VIRGINIA 43 (1831).

<sup>38</sup> National Firearms Act: Hearings Before the House Committee on Ways and Means, 73rd Cong., 2d Sess., 19 (1934).

sector on payment of fair compensation. Known as the Property Requisition Act, the legislation included the following provision to reaffirm and protect Second Amendment rights:

Nothing contained in this Act shall be construed--

(1) to authorize the requisitioning or require the registration of any firearms possessed by any individual for his personal protection or sport (and the possession of which is not prohibited or the registration of which is not required by existing law), [or]

(2) to impair or infringe in any manner the right of any individual to keep and bear arms . . . .<sup>39</sup>

The reason for the above was explained by the House Committee on Military Affairs as follows:

It is not contemplated or even inferred that the President, or any executive board, agency, or officer, would trespass upon the right of the people in this respect. There appears to be no occasion for the requisition of firearms owned and maintained by the people for sport and recreation, nor is there any desire or intention on the part of the Congress or the President to impair or infringe the right of the people under section 2 of the Constitution of the United States, which reads, in part as follows: 'the right of the people to keep and bear arms shall not be infringed.' However, in view of the fact that certain totalitarian and dictatorial nations are now engaged in the willful and wholesale destruction of personal rights and liberties, our committee deem it appropriate for the Congress to expressly state that the proposed legislation shall not be construed to impair or infringe the constitutional right of the people to bear arms. In so doing, it will be manifest that, although the Congress deems it expedient to grant certain extraordinary powers to the Executive in furtherance of the common defense during critical times, there is no disposition on the part of this Government to depart from the concepts and principles of personal rights and liberties expressed in our Constitution.<sup>40</sup>

On the House floor, Congressman Edwin Arthur Hall explained: "Before the advent of Hitler or Stalin, who took power from the German and Russian people, measures were thrust upon the free legislatures of those countries to deprive the people of the possession and use of firearms, so that they could not resist the encroachments of such diabolical and vitriolic state police

<sup>39</sup> P.L. 274, 77th Cong., 1st Sess., Ch. 445, 55 Stat., pt. 1, 742 (Oct. 16, 1941).

<sup>40</sup> Rept. No. 1120 [to accompany S. 1579], House Committee on Military Affairs, 77th Cong., 1st Sess., at 2 (Aug. 4, 1941).



organizations as the Gestapo, the OGPU, and the Cheka."<sup>41</sup> In a further explanation of Second Amendment rights, Congressman A.J. May, Chairman of the Committee, stated: "the right to keep means that a man can keep a gun in his house and can carry it with him if he wants to; . . . and the right to bear arms means . . . that nobody has any right, so long as he bears the arms openly and unconcealed, to interfere with him."<sup>42</sup>

Congressman Jack Kilday, author of the right-to-bear-arms language, insisted on the prohibition on registration of firearms because it "is only the first step. It will be followed by other infringements of the right to keep and bear arms until finally the right is gone. . . . The right to keep and bear arms is a substantial and valuable right of a free people . . . ."<sup>43</sup>

Congressman Boren found the provision necessary both to protect individual rights and to preclude any power to disarm the State militia.<sup>44</sup> The Second Amendment was seen as a counterbalance to federal power over the militia, Congressman Patman pointed out, and "if we should have some Executive who attempted to set himself up as dictator or king, the people can organize themselves together and, with the arms and ammunition they have, they can properly protect themselves."<sup>45</sup>

Fear of tyranny was both real and reasonable in those dark days. Ironically, the very kind of legislation the statutory reaffirmation of the Second Amendment was intended to preclude is now being proposed in the Congress. Long forgotten are the words of wisdom spoken in Congress about the legislative prohibitions on individual firearms possession in Nazi Germany and Communist Russia and the growth of the Gestapo and other police organizations which sought to monopolize possession of firearms.

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<sup>41</sup> 87 CONG.REC., 77th Cong., 1st Sess., 6778 (Aug. 5, 1941).

<sup>42</sup> Id. at 7096 (Aug. 13, 1941).

<sup>43</sup> Id. at 7101.

<sup>44</sup> Id.

<sup>45</sup> Id. at 7102.

Aside from 1789 and 1941, the third and most recent time Congress passed a constitutional amendment or legislation in support of the right to keep and bear arms was in 1986. The years of hard legislative work leading to enactment of the Firearms Owners' Protection Act of 1986 are too well known to require analysis here. It is sufficient to recite the preamble to the Act:

CONGRESSIONAL FINDINGS--The Congress finds that--

(1) the rights of citizens--

(A) to keep and bear arms under the second amendment to the United States Constitution;

(B) to security against illegal and unreasonable searches and seizures under the fourth amendment;

(C) against uncompensated taking of property, double jeopardy, and assurance of due process of law under the fifth amendment; and

(D) against unconstitutional exercise of authority under the ninth and tenth amendments;

require additional legislation to correct existing firearms statutes and endorsement policies; and

(2) additional legislation is required to reaffirm the intent of the Congress, as expressed in section 101 of the Gun Control Act of 1968, that "it is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes."<sup>46</sup>

#### D. THE SUPREME COURT AND THE SECOND AMENDMENT

The U.S. Supreme Court has analyzed the Second Amendment as guaranteeing an individual right to keep and bear arms--particularly arms that could be used for militia purposes. It has also held that all guarantees of the Bill of Rights are entitled to respect, and must be interpreted consistently with the intent of the framers. A ban on transfer or possession of semiautomatic firearms would be inconsistent with Second Amendment jurisprudence as developed by the Supreme Court.

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<sup>46</sup> Sec. 1(b), P.L. 99-308, 100 Stat. 449 (May 19, 1986).

In the Dred Scott decision, the Supreme Court conceded that if African Americans were citizens, they would be "entitled to the privileges and immunities of citizens" and would be exempt from the special "police regulations" applicable to them. "It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies . . .; and it would give them the full liberty of speech . . .; to hold public meetings upon political affairs, and to keep and carry arms wherever they went."<sup>47</sup> The current proposals would relegate all law-abiding citizens to the status of slaves in the antebellum states, many of which prohibited possession of firearms to slaves.

During Reconstruction, the Court stated that the rights of the people "peaceably to assemble for lawful purposes" and "of bearing arms for a lawful purpose" were not "granted" by the Constitution because they existed long before its adoption.<sup>48</sup> The amendments which recognize these rights serve to "restrict the powers of the National government . . . ." <sup>49</sup> A later opinion again recognized "the right of the people to keep and bear arms" and repeated that the Second Amendment is a limitation "upon the power of Congress and the National government. . . ." <sup>50</sup>

At the turn of the century, the Court wrote of "the freedom of speech and of the press" and "the right of the people to keep and bear arms" that "the law is perfectly well settled that the

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<sup>47</sup> Scott v. Sanford, 60 U.S. (19 How.) 393, 417 (1857). (Emphasis added.) "Nor can Congress deny the people the right to keep and bear arms, nor the right to trial by jury, nor compel anyone to be a witness against himself in a criminal proceeding." *Id.* at 450.

<sup>48</sup> United States v. Cruikshank, 92 U.S. 542, 551, 553 (1876).

<sup>49</sup> *Id.* at 553.

<sup>50</sup> Presser v. Illinois, 116 U.S. 252, 265 (1886). Miller v. Texas, 153 U.S. 535, 538 (1894) repeats that "the restriction of" the Second and Fourth Amendments operate "upon the Federal power."

first ten Amendments to the constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we inherited from our English ancestors . . . ."51

In United States v. Miller (1939),<sup>52</sup> the court avoided determining whether a short barrel shotgun may be taxed under the National Firearms Act consistent with the Second Amendment. The district court had declared the Act unconstitutional as in violation of the Second Amendment,<sup>53</sup> and thus no evidence was in the record that such shotgun was an ordinary military arm. The Supreme Court remanded the case for fact-finding based on the following:

In the absence of any evidence tending to show that possession or use of a "shotgun having a barrel of less than eighteen inches in length" at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument. Certainly it is not within judicial notice that this weapon is any part of the ordinary military equipment or that its use could contribute to the common defense. Aymette v. State, 2 Hump. 154, 158.<sup>54</sup>

Whether a semiautomatic firearm, or even a fully automatic firearm, today is ordinary military equipment or could contribute

51 Robertson v. Baldwin, 165 U.S. 275, 281-82 (1897).

52 307 U.S. 174 (1939).

53 26 F.Supp. 1002, 1003 (W.D. Ark. 1939).

54 307 U.S. at 178 (emphasis added). Since no factual record was made in the trial court that a "sawed-off" shotgun could have militia uses, and defendant Miller did not even appear and file a brief in the Supreme Court, the Court did not consider whether the tax and related registration requirements of the National Firearms Act violated the Second Amendment. However, the Court has held of a newspaper tax: "It is a license tax--a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution." Murdock v. Pennsylvania, 319 U.S. 106, 113 (1943). See Thomas v. Collins, 323 U.S. 527, 538-40 (1944) (state may not require registration of persons who exercise First Amendment rights); Minneapolis Star v. Minnesota Comm. of Rev., 460 U.S. 575 (1983) (special tax on only a few newspapers invalid). Of course, the manufacture of all sporting firearms is also subject to an excise tax.

to the common defense should be within judicial notice, but is at a minimum a factual issue which is easily resolved in the affirmative by noncontrovertible evidence. The court did not suggest that the possessor must be a member of the militia or National Guard, asking only whether the arm could have militia use. The private, individual character of the right protected by the Second Amendment went unquestioned.

The Aymette opinion was a Tennessee case which stated on the page cited above by the U.S. Supreme Court: "If the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachments on their rights, etc."<sup>55</sup>

Referring to the militia clause of the Constitution, the Supreme Court stated that "to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made."<sup>56</sup> The court then surveyed colonial and state militia laws to demonstrate that "the Militia comprised all males physically capable of acting in concert for the common defense" and that "these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time."<sup>57</sup> Some common military firearms from the time Miller was decided to the present include the M-11 Garand and M-1 carbine semiautomatic rifles, and the M-2 carbine, M-14, and M-16 automatic rifles; 12 gauge semiautomatic and pump shotguns; and .45 cal. and 9mm semiautomatic pistols.

The Miller court noted that most states "have adopted provisions touching the right to keep and bear arms" but that differences in language meant variations in "the scope of the right guaranteed."<sup>58</sup> State precedents cited by the court are

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<sup>55</sup> 2 Hump. (21 Tenn.) 154, 158 (1840).

<sup>56</sup> 307 U.S. at 178.

<sup>57</sup> Id. at 179.

<sup>58</sup> Id. at 183.



divided mainly over whether the respective state guarantees protect all arms or only militia-type arms.<sup>59</sup>

Miller also cites approvingly the commentaries of Joseph Story and Thomas M. Cooley.<sup>60</sup> Justice Story stated: "The right of the citizens to keep and bear arms has justly been considered, as the palladium of the liberties of the republic; since it offers a strong moral check against usurpation and arbitrary power of the rulers; and will generally, even if these are successful in the first instance, enable the people to resist and triumph over them."<sup>61</sup> Miller's reference to Judge Cooley finds him stating:

Among the other safeguards to liberty should be mentioned the right of the people to keep and bear arms. . . . The alternative to a standing army is 'a well-regulated militia'; but this cannot exist unless the people are trained to bearing arms. The federal and state constitutions therefore provide that the right of the people to bear arms shall not be infringed . . . .<sup>62</sup>

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<sup>59</sup> Id. at 183 n.3. These cases are analyzed in S. Halbrook, THAT EVERY MAN BE ARMED: THE EVOLUTION OF A CONSTITUTIONAL RIGHT 167-69 (1984).

<sup>60</sup> 307 U.S. at 183 n.3.

<sup>61</sup> 2 J. Story, COMMENTARIES ON THE CONSTITUTION 646 (5th ed. 1891). "One of the ordinary modes, by which tyrants accomplish their purpose without resistance is, by disarming the people, and making it an offense to keep arms . . . ." J. Story, A FAMILIAR EXPOSITION OF THE CONSTITUTION OF THE UNITED STATES 264 (1893).

<sup>62</sup> T. Cooley, CONSTITUTIONAL LIMITATIONS 729. T. Cooley, GENERAL PRINCIPLES OF CONSTITUTIONAL LAW 281-282 (2d ed. 1891) states further:

The right declared was meant to be a strong moral check against the usurpation and arbitrary power of rulers, and as a necessary and efficient means of regaining rights when temporarily overturned by usurpation.

The right is General--It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. . . . But the law may make provision for the enrollment of all who are fit to perform military duty, or of a small number only, or it may wholly omit to make any provision at all; and if the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly is that the people from whom the militia must be taken shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose.

While it has not discussed the Second Amendment in any detail since Miller, the Supreme Court has recently denied that some Bill of Rights freedoms "are in some way less 'fundamental' than" others. "Each establishes a norm of conduct which the Federal Government is bound to honor -- to no greater or lesser extent than any other inscribed in the Constitution. Moreover, we know of no principled basis on which to create a hierarchy of constitutional values . . . ."63 The proposed firearms ban, to quote an earlier opinion, "appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments . . . ."64 Misuse of the press or of arms may be punished, but Congress may pass no law restraining exercise of these rights. After quoting the First Amendment, the Court has referred to "the equally unqualified command of the Second Amendment: 'the right of the people to keep and bear arms shall not be infringed.'"65 Moreover, these arms include but are not limited to, semiautomatic rifles, pistols, and shotguns, just as pamphlets and leaflets are just as protected as newspapers and periodicals.66 As stated by the Court:

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63 Valley Forge College v. Americans United, 454 U.S. 464, 484 (1982).

64 United States v. Carolene Products Co., 304 U.S. 144, 152 n.4 (1938).

65 Koingsberg v. State Bar of California, 366 U.S. 36, 49 n.10 (1961).

66 Lovell v. Griffin, 303 U.S. 444, 452 (1938) states:

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.

As the experience of the Revolution attests, pistols, rifles, and shotguns have also been "historic weapons in the defense of liberty," to use the above language. Moreover, "'pistol' ex vi termini is properly included within the word 'arms,' and that the right to bear such arms cannot be infringed." State v. Kerner, 181 N.C. 574, 107 S.E. 222, 224 (1921).

This constitutional protection must not be interpreted in a hostile or niggardly spirit. . . . Such a view does scant honor to the patriots who sponsored the Bill of Rights as a condition to acceptance of the Constitution by the ratifying States. . . .

As no constitutional guarantee enjoys preference, so none should suffer subordination or deletion. . . . To view a particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution.<sup>67</sup>

The Supreme Court has also held that "when we do have evidence that a particular law would have offended the Framers, we have not hesitated to invalidate it on that ground alone."<sup>68</sup> The Constitution must be construed as intended by the framers and by the people adopting it.<sup>69</sup> "In the construction of the language of the Constitution . . . we are to place ourselves as nearly as possible in the condition of the men who framed that instrument. Undoubtedly, the framers . . . had for a long time been absorbed in considering the arbitrary encroachments of the Crown on the liberty of the subject . . . ."<sup>70</sup>

Inherent in the right to keep and bear arms is the penumbral right to transfer arms. A Tennessee court has held: "The right to keep arms necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."<sup>71</sup> The U.S. Supreme Court has not addressed that specific point, but Justice Brennan wrote: "The protection of the Bill of Rights goes beyond the specific guarantees to protect from congressional abridgement those equally fundamental personal rights necessary to make the express guarantees fully

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67 *Ullman v. United States*, 350 U.S. 422, 426-29 (1956).

68 *Lamont v. Postmaster General*, 381 U.S. 301, 308-09 (1965).

69 *Minneapolis Star v. Minnesota Comm. of Rev.*, 460 U.S. 575, 583-84 n.6 (1983).

70 *Whitman v. National Bank of Oxford*, 176 U.S. 559 (1900).  
See *Puerto Rico v. Branstad*, 107 S. Ct. 2802, 2809 (1987).

71 *Ex Parte Bain*, 121 U.S. 1, 12 (1887).

meaningful. . . . 'Constitutional provision for the security of person and property should be liberally construed.'"72

Far from construing it liberally, proponents of firearms bans would ignore the Second Amendment altogether. While the U.S. Supreme Court has had no occasion to consider a prohibition on possession of firearms by law-abiding citizens, state courts with a similar jurisprudence have upheld the fundamental character of the right to possess firearms. In declaring a handgun ordinance invalid as an interference with the rights to bear arms and to self defense, one court stated: "Even though the governmental purpose may be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved."73 Another court has stated concerning the right to keep various firearms, including "a CAR 15 semiautomatic rifle (civilian version of the military's M-16)": "Constitutionally protected behavior cannot be the basis of criminal punishment. . . . The State can take no action which will unnecessarily 'chill' or penalize the assertion of a constitutional right and the State may not draw adverse inferences from the exercise of a constitutional right."74

Wholly aside from these infringements, the proposed legislation is not based on any known constitutional power and contradicts the constitutional scheme of federalism. It seeks to criminalize intrastate transfer in, and mere possession of, firearms which are wholly unrelated to interstate commerce. It would impose overreaching federal burdens on legitimate activities, despite the fact that the overwhelming majority of

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72 See *Rhodes v. R.G. Industries*, 173 Ga.App. 51, 325 S.E. 2d 465, 466-67 (1985) (Second Amendment precludes product liability for marketing of safe firearms to the general public).

73 *City of Lakewood v. Pillow*, 180 Colo. 20, 501 P.2d 744, 745 (1972).

74 *State v. Rupe*, 101 Wash.2d 664, 683 P.2d 571, 594-95 (1984).

states have rejected such laws. A prohibition on semiautomatic firearms would violate the text of the Constitution and the Bill of Rights.

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POSTSCRIPT ON THE POLICE STATE CHARACTER  
OF PROPOSALS TO DISARM THE CITIZENS

The framers of the Bill of Rights were fully aware of the costs of an armed populace, for newspapers of the time reported murders, accidental shootings, and suicides. Yet they were equally aware of the far higher costs of a disarmed populace, where individuals are subject to murder by every robber and, worse, to massacre by oppressive governments, domestic and foreign.

The twentieth century is not immune to the butchery of populations by governments, a phenomenon known to the Founding Fathers. Should firearms be possessed only by the police and military? If so, the ideal state would perhaps be Cambodia, where the "killing fields" symbolize genocide to untold millions. Is genocide limited to Third World barbarians? Six million unarmed Jews perished at the hands of the Nazi military and police, which were the instruments of a government composed of educated men originally elected to office.

Nor did the Founding Fathers harbor any illusions that somehow the police are innately good, while the people are innately bad. Today, when a private individual commits murder, the proposal is made that millions of law-abiding individuals should be punished by being disarmed. Yet logically, such a proponents should also call for the disarming of all police officers whenever one policeman commits unlawful homicide. The instance of the white police officer who recently shot and killed



a black motorcyclist, also killing his passenger, for a traffic infraction in Miami should give rise to proposals to ban armed police. And because of the My Lai massacre--in which dozens of children, babies and elderly persons were executed in a ditch in Vietnam--all members of the U.S. Armed Forces should presumably be disarmed.

In a republic, the right of the people to keep arms is a basic civil liberty. Only those who commit crimes, whether private citizens or police officers, are subject to loss of the right to possess firearms and other civil rights. The disarming of the citizenry and its replacement with a police state will increase, not decrease, criminal violence and will destroy the constitutional republic.

Attachment #1

SMALL ARMS IDENTIFICATION AND OPERATIONS  
GUIDE--EURASIAN COMMUNIST COUNTRIES

Harold E. Johnson

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### Section III. ASSAULT RIFLES

#### A. THE 7.62-MM KALASHNIKOV ASSAULT RIFLE (AK-47)

##### 90. General

a. Assault rifles are short, compact, selective-fire weapons that fire a cartridge intermediate in power between submachinegun and rifle cartridges. Assault rifles have mild recoil characteristics and, because of this, are capable of delivering effective full automatic fire at ranges up to 300 meters.



Figure 56. Typical AK-47 (Hungarian).

b. The Soviet designed Kalashnikov AK-47 assault rifle (fig 56), a gas-operated, selective fire, box magazine-fed weapon, was the major infantry arm for most Eurasian Communist countries. The Warsaw Pact Armies, however, have generally replaced the AK-47 with the similar, but improved, AKM assault rifle (sec III, subsec B). The AK-47 remains in wide use in Asia and is still used as a substitute standard weapon in most Warsaw Pact Armies. Large numbers of these weapons have also been passed to other

## Attachment #2

## MEMORANDUM TO FILE

## FIREARMS ADVISORY PANEL

The initial meeting of the Firearms Advisory Panel was held in Room 3313, Internal Revenue Building, on December 10, 1968, with all panel members present. Internal Revenue Service personnel in attendance at the meeting were the Director, Alcohol and Tobacco Tax Division, Harold Serr; Chief, Enforcement Branch, Thomas Casey; Chief, Operations Coordination Section, Cecil M. Wolfe, and Firearms Enforcement Officer, Paul Westentberger. Deputy Assistant Commissioner Compliance, Leon Green, visited the meeting several times during the day.

The Director convened the meeting at 10:00 a.m. by welcoming the members and outlining the need for such an advisory body. He then introduced the Commissioner of Internal Revenue, Mr. Sheldon Cohen, to each panel member.

Mr. Cohen spoke to the panel for approximately fifteen minutes. He thanked the members for their willingness to serve on the panel, explained the role of the panel and some of the background which led to the enactment of the Gun Control Act of 1968. Commissioner Cohen explained to the panel members the conflict of interest provisions of regulations pertaining to persons employed by the Federal Government and requested that if any member had any personal interest in any matter that came under discussion or consideration, he should make such interest known and request to be excused during consideration of the matter.

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Mr. Serr then explained to the panel the areas in which the Division would seek the advice of the panel and emphasized that the role of the panel would be advisory only, and that it was the responsibility of the Service to make final decisions. He then turned the meeting over to the moderator, Mr. Wolfe.

Mr. Wolfe explained the responsibility of the Service under the import provisions of the Gun Control Act and under the Mutual Security Act. The import provisions were read and discussed.

The panel was asked to assist in defining "sporting purposes" as used in the Act. It was generally agreed that firearms designed and intended for hunting and all types of organized competitive target shooting would fall within the sporting purpose category. A discussion was held concerning the so-called sport of "plinking". It was the consensus that, while many persons participated in the type of activity and much ammunition was expended in such endeavors, it was primarily a pastime and could not be considered a sport for the purposes of importation since any firearm that could expel a projectile could be used for this purpose without having any characteristics generally associated with target guns.

The point system that had been developed by the Division and another point system formula suggested and furnished by the Southern Gun Distributors through Attorney Michael Desalle, was explained and demonstrated to the panel by Paul Westenberger. Each panel member was given copies of the formulas and requested



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to study them and endeavor to develop a formula he believed would be equitable and could be applied to all firearms sought to be imported.

A Model 8259 Beretta, 7.62mm, NATO Caliber Sporter Version Rifle was presented to the panel and their advice sought as to their suitability for sporting purposes. It was the consensus that these rifles do have a particular use in target shooting and hunting. Accordingly, it was recommended that importation of this rifle together with the SIG-AUT 7.62mm NATO Caliber Sporting Rifle and the Cetes 7.62mm NATO Caliber Sporting Rifle be authorized for importation. Importation, however, should include the restriction that these weapons must not possess combination flash suppressors/grenade adaptors with outside diameters greater than 20mm (.22mm is the universal grenade adaptor size).

The subject of ammunition was next discussed. Panel members agreed that incendiary and tracer small arms ammunition have no use for sporting purposes. Accordingly, the Internal Revenue Service will not authorize these types of small arms ammunition importation. All other conventional small arms ammunition for pistols, revolvers, rifles and shotguns will be authorized.

The meeting was adjourned at 4:00 p.m.

G. M. Wolfe

(Editor's note: Attachment #3 retained in committee files)



Attachment #4

**DEPARTMENT OF THE TREASURY**  
**BUREAU OF ALCOHOL, TOBACCO AND FIREARMS**  
**WASHINGTON, D.C. 20226**

25 JAN 1980

TTF:ERO  
7540

Mr. Mitch Kalter  
Action Manufacturing Company  
4567 Bermuda Street  
Philadelphia, PA 19124

Dear Mr. Kalter:

This refers to the sample UZI semiautomatic carbines bearing serial numbers ATF1 and ATF2 which were recently submitted to this office for evaluation as to their classification under the provisions of the Gun Control Act of 1968.

Examination of the submitted samples indicate that the above carbines have been designed and manufactured as semiautomatic weapons. Testing of the carbines further indicates that they fire only in the semiautomatic mode and cannot be easily converted to fire fully automatically. Additionally the receivers of the carbines, although bearing a strong external resemblance to the UZI submachinegun, differ considerably in internal design and construction.

Therefore, as a result of our examination and testing of the various samples submitted over the past year the above described UZI semiautomatic carbines are classified as being firearms as that term is defined in Section 921(a)(3) of Title I of the Gun Control Act of 1968. These firearms are not subject to any of the provisions of the National Firearms Act provided that they have barrels in excess of 16 inches in length and an overall length of at least 26 inches with the folding stock extended.

Semiautomatic UZI carbines which are identical in design and construction to the submitted samples may be imported for commercial resale. Please note that any change in the design of the firearms could change this classification.

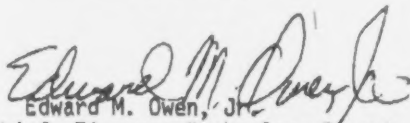
-2-

Mr. Mitch Kalter

We would like to thank you for the donation of the above samples plus the prototype bearing serial number 094227. These firearms are a valued addition to our Firearms Reference Collection. Since the prototype bearing serial number 094227 is constructed from a machinegun receiver we are providing a copy of this letter to our NFA Branch. They may contact you concerning any action required on your part to affect the transfer of this particular weapon to the Bureau of Alcohol, Tobacco and Firearms.

We trust that the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely yours,



Edward M. Owen, Jr.  
Acting Chief, Firearms Technology Branch

Attachment #5

JAN 25 1983

Dear Mr. [REDACTED]

This refers to Importation Permit Number [REDACTED] which authorized the conditional importation of one UZI semiautomatic pistol in caliber 9mm parabellum.

An examination of the submitted sample, bearing serial number [REDACTED] indicates that the pistol accrues a qualifying score of 129 points on ATP Form 4590, Factoring Criteria for Weapons. It was also noted that the firearm contains all of the markings required by Section 178.92, Part-178, Title 27, Code of Federal Regulations.

Based on our examination, the UZI semiautomatic pistol as described above is suitable for importation as a sporting purpose firearm. We would like to thank you for the donation of the above sample. This pistol will be a useful addition to our Firearms Reference Collection.

We trust that the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely Yours

Edward M. Owen, Jr.  
Chief, Firearms Technology Branch

EMOWEN: [REDACTED]  
CC: Imports Branch

6

| CODE     | INITIATOR | REVIEWER | REVIEWER | REVIEWER | REVIEWER | REVIEWER | REVIEWER |
|----------|-----------|----------|----------|----------|----------|----------|----------|
| SUR-NAME |           |          |          |          |          |          |          |
| DATE     |           |          |          |          |          |          |          |

ATP F 1333 (12-78)

REPLACES ATP FORM 921B (3) WHICH MAY BE USED

CORRESPONDENCE APPROVAL AND CLEARANCE

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS



Attachment #6

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

FEB 21 1986

REFER TO  
LE:F:TE:EMO  
7540

Mr. Don Wood  
Gun South, Inc  
108 Morrow Avenue  
Trussville, Alabama 35173

Dear Mr. Wood:

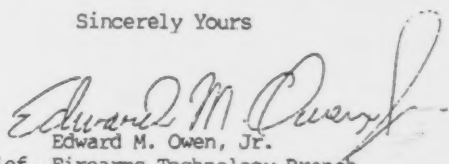
This refers to your recent inquiry in which you ask about the classification of the semiautomatic version of the AUG rifle as manufactured by Steyr-Daimler-Puch, Steyr, Austria.

We have previously examined the Steyr AUG semiautomatic rifle in caliber .223 (5.56mm) and the weapon has been approved for importation as a firearm which is suitable for sporting purposes. This classification means that the AUG semiautomatic rifle may be imported by licensed importers for resale in the civilian marketplace.

We must also point out that the standard selective fire version of the AUG is classified as a machinegun which may only be imported for sale to the United States government or qualified political sub divisions.

We trust that the foregoing has been responsive to your inquiry. If we can be of any further assistance, please contact us.

Sincerely Yours

  
Edward M. Owen, Jr.  
Chief, Firearms Technology Branch



Attachment #7



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

OCT 15 1987

Gentlemen:

This refers to the two 7.62 X 39mm caliber  
Inc., models Hunter and AK-47S rifles  
conditionally imported under permit # and #  
for testing and evaluation by ATF.

Examination of the two rifles indicates that they are  
suitable for importation as sporting firearms.

The submitted firearms are being returned to you under  
separate cover.

The firearms should be entered in your records of  
acquisition and disposition and marked in accordance with  
27 CFR 178.92.

If we can be of further assistance, please let us know.

Sincerely yours,

*Wayne P. Moran*

Wayne P. Moran:

Chief, Firearms and Explosives Imports Branch

STATEMENT OF DAVID B. KOPEL  
OF GUARDIAN GROUP INTERNATIONAL

REGARDING

S.386 & H.R. 669

RESTRICTIONS AND BANS ON SEMI-AUTOMATIC FIREARMS

BEFORE THE

U.S. SENATE SUBCOMMITTEE ON THE CONSTITUTION  
OF THE COMMITTEE ON THE JUDICIARY

PRESENTED ON BEHALF OF

GERALD S. ARENBERG

EXECUTIVE DIRECTOR OF THE

NATIONAL ASSOCIATION OF CHIEFS OF POLICE

AND

DENNIS RAY MARTIN

NATIONAL PRESIDENT OF THE

AMERICAN FEDERATION OF POLICE

February 10, 1989

Russell Senate Office Building

## ABSTRACT OF TESTIMONY

\*Despite a string of arrests for offenses including robbery, illegal weapons sales, and assault on a police officer, Stockton murderer Patrick Purdy was never imprisoned for more than a few weeks -- even after a mental health report warned that Purdy was "a danger to himself and others." Covering the tracks of failure, California's authorities have sealed Purdy's criminal and mental health records. We urge that the cover-up be ended and the records be opened, as the first step in a critical re-examination of the serious flaws of the California and national justice systems.

\*Purdy's criminal record demonstrated that he already knew how to buy illegal guns. The only control that could have stopped Purdy from finding and using an illegal gun was prison. The tragedy in Stockton must spur the nation into a hard look at our social control systems which are not controlling criminals. In particular, our underfunded police, prosecutorial, prison, and mental health systems need more resources.

\*The Second Amendment does not protect a right to own guns for hunting. It does guarantee an individual's right to own guns for personal defense. With the increasing prevalence of gang violence, citizens need reliable guns with quick-firing capacity.

\*"A well-regulated Militia being necessary to the Security of a free State," the Second Amendment guarantees all members of the militia -- all adults -- the right to own militia, military-type weapons for national defense. The civilian militia was most recently called to duty in World War II by the Governors of Hawaii, Virginia, and Maryland.

\*Criminals will easily evade any restrictions on semi-automatic firearms, just as they currently evade restrictions on handguns.

\*Restrictions or bans on semi-automatics will lead to disrespect for the law, because so many otherwise law-abiding citizens will refuse to obey laws against semi-automatics.

\*Careful analysis of laws against "assault weapons" shows that they can be used to ban most pistols and long guns, including hunting rifles and shotguns.

\*Even the police organizations which have backed handgun control are deserting the anti-gun groups' attempt to pass extreme and unenforceable legislation.

The National Association of Chiefs of Police comprises 10,000 chiefs of police, sheriffs, and command ranks throughout the United States. It is a non-profit organization dedicated to the eradication of crime and the protection of the nation from its enemies. NACOP is headed by retired Chief Robert Ferguson. Headquarters are 1000 Conn. Ave. NW, Suite 9, Wash. D.C. 20036, telephone (202) 293-9088.

The American Federation of Police represents 78,000 rank and file law enforcement officers, security personnel, and citizen crime-watch volunteers. The Federation's major concern is training for on-the-beat patrol officers. Deputy Sheriff Dennis Ray Martin, of Saginaw, Michigan, heads the Federation. Headquarters are 110 NE 125th St., North Miami, Florida 33161, telephone (305) 891 1700.

The National Association of Chiefs of Police and the American Federation of Police have not had the opportunity to poll their members on the subject of restrictions on semi-automatics. Chief Arenberg and Deputy Martin wish to make it clear that the following testimony is their personal statement, and not that of their organizations. Chief Arenberg and Deputy Martin believe it is improper for leaders of police groups to take policy stands on behalf of the group without first surveying the membership. Too often a Police Chief working for gun control incorrectly claims to be acting on behalf of his patrol officers.

Guardian Group International Corp. is a security consulting and research firm based in New York City. The firm provides expert advice on all matters of corporate and personal security, and also conducts criminology research. Mr. Stephen D'Andrilli, formerly an officer with the New York City Police Department, is founder and President of Guardian Group. During his fifteen years of service with the Department, Mr. D'Andrilli was decorated five times. He holds an M.P.A. in Public Administration and an M.A. in Criminal Justice from John Jay College of Criminal Justice. Mr. D'Andrilli has appeared on numerous national and local broadcasting programs to discuss gun policy and self-defense issues. His published articles include "Has Society Placed the Burden of Self-Defense on the Individual?" and "The Glock in New York City." Guardian Group's headquarters are 21 Warren Street, Suite 3-E, New York, NY 10007, telephone: (212) 619-3838, fax (212) 393-9363.

David B. Kopel, formerly an assistant district attorney in Manhattan, is a firearms policy analyst for Guardian Group. He previously presented live testimony to the U.S. Senate on August 2, 1988, at the hearings on the proposed national seven-day waiting period for handgun purchases.

He is the author of Trust the People: The Case Against Gun Control (CATO Institute, July 1988); "The Failure of Canadian Gun Control," (Police Times, forthcoming); "Rowan Case and the Need to Bear Arms" (Wall Street Journal, June 24, 1988); "Why Wait to Buy a Gun," (Chicago Tribune, Sept. 12, 1988), and other articles and monographs.

Mr. Kopel graduated 5th in his class from the University of Michigan Law School, where he served on the Michigan Law Review from 1983 to 1985. In 1982, he graduated from Brown University, with highest honors. His thesis "The Highbrow in American Politics -- Arthur M. Schlesinger Jr. and the Role of the Intellectual in Politics" won the National Historical Society Prize for best history thesis.

Mr. Kopel may be contacted at (303) 333-6723.



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Mr. Chairman:

Thank you for the opportunity to present this statement.

At the outset, we must express our disappointment at the structure of this hearing. Senator Simon, the chair of this Subcommittee, did not allow opponents of the legislation to choose their own witnesses. Senator Simon forbade live testimony by Mr. Stephen Halbrook, the nation's foremost historian of the Second Amendment. Instead, Senator Simon permitted testimony only from gun organizations.

It is unfortunate that a hearing dedicated to reasoned inquiry would exclude the most reasoned and expert voices. It is particularly ironic that suppression of First Amendment rights take place before the Subcommittee on the Constitution, in order to advance legislation that will violate the Second Amendment. It is also unfortunate that by permitting live testimony only from gun organizations, Senator Simon may have created an impression that only gun organizations oppose restrictions or bans on semi-automatic firearms.

We vigorously dispute that claim. We offer this written testimony -- as Senate rules permit -- to set the record straight. We oppose this legislation, and all other proposed restrictions on the right of American citizens to own handguns, shotguns, and rifles, including semi-automatic firearms.

As our testimony will demonstrate, restrictions or bans on semi-automatics will increase predatory violence against citizens. Criminals will easily evade any new gun control laws. Wholesale

bans on semi-automatics are not an appropriate or effective response to an individual's semi-automatic misuse, any more than a complete ban on automobiles would be a response to a person's auto misuse. Moreover, bans and restrictions violate the Second Amendment.

A few days ago, Mr. William Tafoya, an instructor at the national FBI academy, warned a California audience that the U.S. may soon face a new round of riots far deadlier than earlier outbreaks. Mr. Tafoya explained that white supremacists are attempting to infiltrate police organizations, with the aim of provoking terrorist incidents.

Almost at the same time that Mr. Tafoya was speaking, 500 Crips gang members met in Compton, California to organize new schemes of drug-running and murder.

No gun control law has ever disarmed terrorists, rioters, or gangsters. No police force can protect all citizens all the time from terrorism, from riots, or from gang attacks. Mr. Chairman, no matter what this Subcommittee does, terrorists, rioters, and gangsters will continue to have access to all types of guns. To repulse attacks by large gangs of criminals, citizens need semi-automatic firearms. We support the right of law-abiding citizens to defend themselves, and to possess the weapons which are essential to self-defense in these dangerous times.

Later in our testimony, we will return to the subject of self-defense. But first it is necessary to address the facts of the tragic murders in Stockton, California, which the anti-gun organizations have turned into a publicity vehicle for their long-standing plans to outlaw semi-automatics.

#### **I. THE STOCKTON MASSACRE ILLUSTRATES THE INEFFECTIVITY OF GUN CONTROL**

Long before Patrick Purdy opened fire on the children at Cleveland Elementary School, it was clear that he should not be allowed on the streets.

Patrick Purdy was arrested for the felonies of sale of dangerous weapons, receiving stolen property, criminal conspiracy, and attempted robbery. His own mother even called the police on him, after he vandalized her car for refusing to give him money for drugs. Yet after every arrest, Patrick Purdy escaped with no more than a misdemeanor conviction, and a few weeks in jail.

Purdy was released for the last of these offenses in 1984. In the following years, he bought five handguns legally in California, at all times complying with California's strict 15-day waiting period for handgun purchases, because he had no felony convictions.

In 1987, Purdy was caught shooting at trees in El Dorado National Forest. Resisting arrest, he assaulted a police officer and kicked out the back window of the police cruiser. When Purdy came up for parole after only 45 days, the parole report noted that

he had attempted suicide in jail, smeared his jail wall with blood, and had been found in possession of white supremacist literature. The parole report called Purdy "a danger to himself and others." The parole board let him go.

A part-time Los Angeles prostitute, Patrick Purdy already knew about the black market in guns, as evinced by his arrest for illegal gun transactions. It is unrealistic to expect that criminals like Purdy, adept at operating in the shadows of society, will not know how to obtain an illicit gun.

We favor the one control that could have kept Patrick Purdy from slaughtering the children. Prison. The only way to keep Patrick Purdy and other white supremacists, as well as gang members, from obtaining and using illegal guns is to keep them in jail.

California repeatedly failed its duty to incapacitate Purdy. Rather than looking at what went wrong with the handling of Purdy, California's criminal justice authorities have sealed Purdy's criminal and mental health records. We urge that the cover-up be ended and the records be opened, as the first step in a critical re-examination of the serious flaws of the California and national justice systems.

We implore that the tragedy in Stockton spur the nation into a hard look at our social control systems which are not controlling criminals. Why are our mental health systems so underfunded that criminally insane people like Purdy are not committed and treated?



Why are our police, prosecutors, and wardens told to do so many jobs -- to wage war on drugs, to repress "quality of life" crimes such as prostitution, to protect car stereos from teenagers -- and then given so little resources? So little resources that they cannot even put violent offenders like Patrick Purdy in jail for more than a few weeks. Why has our social cohesiveness degenerated so much that none of Patrick Purdy's acquaintances tried to get him mental treatment, or alerted the authorities of his dangerousness?

Mr. Chairman, members of Congress, and fellow citizens, we need the help of the American people to combat this epidemic of crime, and to stop the next Patrick Purdy before he kills more children. Law enforcement authorities need more resources to fight violent crime. As a first step in attacking violent crime, New York City and other jurisdictions should re-allocate the millions of dollars they spend on unenforceable gun control laws, and instead use the money to improve prosecutorial and judicial offices. The dozens of police and civilian employees in the gun licensing division of the N.Y.C. Police Department should be investigating crimes and patrolling the streets, rather than shuffling papers behind a desk.

Passing gun control bills during moments of hysteria takes no political courage, and costs no money. Reforming America's criminal justice and mental health systems has neither of these advantages. But criminal justice reform may stop the next Patrick Purdy. Gun control will not.

## II. THE CONSTITUTION PROTECTS SEMI-AUTOMATICS BECAUSE THEY ARE ESSENTIAL TO PERSONAL AND NATIONAL DEFENSE

Ideally, the entire discussion in this section would be unnecessary. Citizens who wish to exercise their Constitutional rights do not have to offer a reason. No reader has to justify the literary calibre of his book, and no citizen needs to justify the model of her gun. Nevertheless, because the legitimacy of owning semi-automatics has been so broadly attacked, we proffer the following defense.

### A. Hunting

Proponents of laws against semi-automatics point out that no one requires a 100 round drum to go hunting. True, no one needs 100 shots to kill a deer, and some assault rifles have inferior long range accuracy compared to specialized hunting guns.

However, the ruggedness and durability of the AK-47 and other military guns makes them well-suited for the rough outdoor conditions of hunting. That is why a Finnish company has designed an AK-47 especially for hunting, the Valmet Hunter, which is especially prized for its quick follow-up shots. As Edward D. Conroy, the Deputy Associate Director for Law Enforcement of the Bureau of Alcohol, Tobacco and Firearms informed this Subcommittee, the AK-47 differs from sporting guns only in its outward appearance. Time magazine, in its recent cover story calling for

a ban on semi-automatics, observed that the Ruger M-14 is a common hunting tool.

The Constitution, though, does not guarantee a right to recreational hunting, any more than it guarantees a right to bowling or hang gliding. We do not argue that semi-automatics deserve special Constitutional protection because they are sometimes used for hunting. Rather, they deserve protection because they are militia guns -- because they are made for personal and national defense.

#### B. Personal Self Defense

Critics of "assault rifles" claim that these guns have no purpose except to kill. Yet this argument is no argument at all. Only if all killing were wrong would a gun made for killing be illegitimate. In fact, our legal culture clearly guarantees the right to self-defense, including the right to take an aggressor's life if necessary.

Political theorists such as John Locke, widely read and admired by the founding fathers, considered the natural right of self-defense to be the fundamental starting point of a civilized society. Today, all 50 states recognize the right to self-defense. When the National Association of Chiefs of Police polled its membership recently, 84% stated that inability of the police to protect all persons at all times justifies the civilian ownership of firearms.

Semi-automatic rifles with 20 round magazines are not essential for self-defense in the most typical contexts, such as a homeowner confronting a lone burglar.

Nevertheless, there are situations where the magazine capacity of an AR-15, AK-47, or Uzi may prove essential to protecting innocent life.

For example, pleasure boat owners in the Gulf Coast have been stocking up on Uzis. Why? Because drug smugglers commonly pull alongside pleasure boats, murder all the passengers, use the boat to transport a load of drugs to the mainland, and then abandon the boat. The drug runners do their killing with high-powered guns stolen from the military, or bought on the same international black market that supplies cocaine by the pound.

Boat owners who hope to survive an encounter with the smugglers must arm themselves with reliable, military-style weapons capable of firing at several attackers in quick succession.

Anyone who reasonably fears attack by a gang -- such as a store-owner in the middle of a Miami riot -- could reasonably conclude that the rapid-fire capability of an Uzi or AK-47 is the only effective way to protect his or her family from murder.

In rural areas, farmers who may confront a bear attacking their livestock also carry assault guns. Bears do not fall down after being shot just once. Rugged and reliable, military style guns can be bounced around in a pickup truck, frozen on a winter

night, caked with mud, and still fire with absolute reliability.<sup>1</sup>

Incidentally, Senator Metzenbaum, sponsor of S. 386, has called for a General Accounting Office study of gun accidents involving children. The Senator might consider that the best military-style guns, such as the Uzi, have excellent safety mechanisms that make them more childproof than simple hunting rifles.

### C. The Militia

The Constitution -- despite what the NRA and other hunting organizations claim -- does not protect a right to hunt, nor does it protect a right to own guns solely for hunting. The Second Amendment states: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed."

---

1. The simplicity of the AK-47's design makes it robust and amazingly sturdy. While many military guns have become obsolete almost upon invention, the AK-47 remains the world's premiere assault rifle over 40 years after it first entered production. Millions of copies have been produced, and millions more of newer versions called AKM and AK74.

The AK-47 and its progeny remain in common production worldwide, including in China, the source of the AKS that Patrick Purdy used in Stockton. (The "A" in AK means automatic; the "K" is for its inventor Mikhail Kalashnikov; and the "47" for the year it was first produced. In the West, "AK-47" is commonly used to describe any model Kalashnikov.) As many as 70 million Kalashnikovs have been manufactured, more than other rifle in history. Ian V. Hogg, The Illustrated Encyclopedia of Firearms (Chartwell Books: Secaucus, N.J., 1978); Duncan Long, AK47 (Paladin Press: Boulder, Colo., 1988).



The militia -- not hunting -- is the core of the Second Amendment. As the Supreme Court declared in U.S. v. Miller (1939), guns that are useful for the militia or for militia training are protected by the Constitution. Thus, it is precisely the AK-47s, Uzis, AR-15s, M-14s and other civilian versions of military guns that are most clearly secured by the right to bear arms.<sup>2</sup>

"Who are the militia?" asked founding father George Mason of Virginia. He answered his own question: "They consist now of the whole people."<sup>3</sup> Before independence was even declared Massachusetts patriot Josiah Quincy had called for "a well-regulated militia composed of the freeholder, citizen and husbandman, who take up their arms to preserve their property as individuals, and their rights as freemen."<sup>4</sup>

In U.S. v. Miller, the Court echoed the founders' clear understanding of the militia: "all males physically capable of acting in concert for the common defense...expected to appear bearing arms supplied by themselves and of the kind in common use

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2. The AK-47 and its derivatives are the main Communist infantry guns, although they are sometimes manufactured in non-Communist countries. The Uzi is an Israeli semi-automatic. The AR-15 is a civilian version of the U.S. Army's M-16. The M-1 and M-14 are civilian predecessors of the AR-15. Contrary to claims by anti-gun organizations, semi-automatic weapons such as the M-1 have been readily available to U.S. civilians for over half a century.

3. Quoted in Morton Borden ed., The Antifederalist Papers, vol. 3 (East Lansing: Michigan State University Press), p. 425.

4. Quoted in Clinton Rossiter, The Political Thought of the American Revolution (New York: Harcourt, Brace and World, 1953), pp. 126-27.

at the time."<sup>5</sup> The modern United States Code follows the Constitutionally-mandated definition, making subject to militia duty all able bodied males between the ages of 17 and 45.<sup>6</sup>

Incidentally, this very Subcommittee in 1982 investigated the historical roots of the Second Amendment. The Subcommittee unanimously concluded that the Second Amendment guarantees an individual right to bear all types of arms.<sup>7</sup>

The Second Amendment guarantees a popular militia in order to provide for "the security of a free state" -- ensuring that there will always be a force capable of overthrowing a domestic tyrant, or of resisting an invasion by a foreign one.

Anti-gun groups argue that the militia concept is obsolete, in light of advances in military science. Yet that argument is at odds with contemporary history.

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5. 307 U.S. 174, 179 (1939).

6. 10 United States Code sect. 311(a).

The next section of the code distinguishes the organized militia (the National Guard) from the "unorganized militia" (the people). The modern federal National Guard was specifically raised under Congress's power to "raise and support armies," not its power to "Provide for organizing, arming and disciplining the Militia." House Report No. 141, 73d Cong., 1st sess. (1933), pp. 2-5. Congress did so in order that the National Guard could be sent into overseas combat.

The National Guard's weapons plainly cannot be the arms protected by the Second Amendment, since Guard weapons are owned by the federal government. 32 United States Code sect. 105(a)[1].

7. Senate Committee on the Judiciary, Subcommittee on the Constitution, The Right to Keep and Bear Arms, 97th Congress, 2d sess., Senate Doc. 2807 (February 1982).

Only a few days ago, the last Soviet troops left Afghanistan, driven out by a popular guerilla army. The mujahedeen made effective use of, among other weapons, AK-47s which they captured from the Soviets, received from the Chinese, or constructed themselves with simple tools. While American Stinger missiles helped devastate the Soviet airforce, the missiles did not arrive until 1986, by which time the guerrillas had fought the mightiest army in world history to a draw for seven years.

During World War II, which was fought with essentially the same types of ground combat weapons that exist today, armed American citizens played an important role. After Pearl Harbor the militia was called into action. Nazi submarines were constantly in action off the East Coast. On the West Coast, the Japanese seized several Alaskan islands, and strategists wondered if the Japanese might follow up on their dramatic victories in the Pacific with an invasion of the Alaskan mainland, Hawaii, or California.

Hawaii's governor summoned armed citizens to man checkpoints and patrol remote beach areas.<sup>8</sup> The Governor of Maryland called on "the Maryland Minute Men," including "members of Rod and Gun Clubs, of Trap Shooting Clubs and similar organizations," for "repelling invasion forays, parachute raids, and sabotage uprisings," as well as for patrolling beaches, water supplies, and railroads. Over

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8. Alan Gottlieb, "Gun Ownership: A Constitutional Right," Northern Kentucky Law Review 10 (1982): 138.

15,000 volunteers brought their own weapons to duty.<sup>9</sup> Gun owners in Virginia were also mustered into home service.<sup>10</sup> Americans everywhere armed themselves in case of invasion.<sup>11</sup> After the National Guard was federalized for overseas duty, the "militia proved a successful substitute for the National Guard," according to a Defense Department study. Militiamen, providing their own guns, were trained in patrolling, roadblock techniques, and guerilla warfare.<sup>12</sup>

It has been more than 40 years since the last invading troops left American soil. No invasion is plausible in the foreseeable future. But Constitutional rights are for all time. Only the most

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9. Governor O'Connor of Maryland delivered a radio address on March 10, 1942, at which he called for volunteers to defend the state: "[T]he volunteers, for the most part, will be expected to furnish their own weapons. For this reason, gunners (of whom there are sixty thousand licensed in Maryland), members of Rod and Gun Clubs, of Trap Shooting and similar organizations will be expected to constitute a part of this new military organization." State Papers and Addresses of Governor O'Connor, vol III, p. 618, quoted in Bob Dowlut, "The Right to Bear Arms: Does the Constitution or the Predilection of Judges Reign?" Oklahoma Law Review 36 (1985): 76-77, n. 52. See also Baker, "I Remember 'The Army' with Men from 16 to 79," Baltimore Sun Magazine, November 16, 1975, p. 46.

10. M. Schlegel, Virginia On Guard--Civilian Defense and the State Militia in the Second World War (Richmond: Virginia State Library, 1949), pp. 45, 129, 131. According to Schlegel, the Virginia militia "leaned heavily on sportsmen," because they could provide their own weapons. Ibid., p. 129; quoted in Bob Dowlut, "State Constitutions and the Right to Keep and Bear Arms," Oklahoma City University Law Review 2 (1982): 198.

11. "To Arms," Time, March 30, 1942, p. 1.

12. Office of the Assistant Secretary of Defense, U.S. Home Defense Forces Study (March 1981), pp. 32, 34, 58-63, quoted in Dowlut, "State Constitutions," p. 197.

naive believer in American omnipotence or the nuclear umbrella can feel certain that America will never again need the militia.

Further, as the late vice president Hubert Humphrey explained, domestic dictatorship will always be a threat: "The right of citizens to bear arms is just one more guarantee against arbitrary government, one more safeguard against the tyranny which now appears remote in America, but which historically has proved to be always possible."<sup>13</sup>

The most advanced technology in the world could not keep track of guerrilla bands in the Rockies, the Appalachians, the great swamps of the South, or Alaska. The difficulty of fighting a protracted war against a determined popular guerrilla force is enough to make even the most determined potential dictator think twice.<sup>14</sup>

Even if an act of God forever shielded America from foreign invasion or domestic tyranny, there is still the risk that America may again find itself in overseas war. Basic training is hardly enough time to master an assault rifle. A study by the Arthur D. Little research firm concluded that shooting experience with

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13. Quoted in David Hardy, "The Second Amendment as a Restraint on State and Federal Firearm Restrictions," in Donald B. Kates, ed., Restricting Handguns: The Liberal Skeptics Speak Out, (Croton-on-Hudson, N.Y.: North River Press, 1979), pp. 184-85.

14. From Aaron Burr to Huey Long, Joseph McCarthy, Douglas MacArthur, and Richard Nixon, American history has seen its share of potential dictators. So far, our other safeguards have succeeded. But in a Constitution and political structure designed to last several hundred years, one cannot always count on the press or Congress to save things at the last minute.



"military type small arms prior to entry into military service contributes significantly to the training of the individual soldier." In the next war, American soldiers who have learned about military rifles as a civilian hobby will likely save the lives of their fellow soldiers whose only experience with firearms is a membership card in Handgun Control.

### III. LAWS AGAINST SEMI-AUTOMATICS ARE UNENFORCEABLE

#### A. Criminals Will Easily Evade Such Laws

If it were plausible for gun control laws to disarm criminals, such proposals might merit lengthy consideration. But historical experience has proven American gun control laws to be futile.

#### 1. Complete Bans

The supply of semi-automatic weapons in the United States is already more than sufficient to supply the market for stolen guns. Even if by some miracle, the government manages to confiscate all the legally and illegally-owned semi-automatics, criminal re-supply will be easy. A competent backyard mechanic can build a fully automatic rifle. (In a full automatic, bullets continue to fire as long as the trigger stays squeezed.) Indeed, Afghan peasants, using tools considerably inferior to those in the Sears catalogue, have built fully automatic rifles capable of firing the Soviet AK-

47 cartridge.<sup>15</sup> Illegal home production of handguns is already common; a Bureau of Alcohol, Tobacco, and Firearms study found that one-fifth of the guns seized by the police in Washington, D.C., were homemade.<sup>16</sup>

Criminals, though, will not need to buy guns from backyard mechanics. The day that semi-automatics become illegal, organized crime will swiftly supply the criminal market with mass-produced illegal guns. Tulane Professor James Wright, author of the National Institute of Justice study of criminal gun use, argues that gun controls are less likely to reduce the pool of criminal guns than to provide organized crime with lucrative new business.<sup>17</sup>

In 1986, the National Association of Chiefs of Police sent a questionnaire to every major police official in the country. The survey produced the following results: 97 percent believed that a firearms ownership ban would not reduce crime or keep criminals from using guns; 89 percent believed that gun control laws such as

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15. "Tribesmen in Pakistan Thrive," New York Times, November 2, 1977, p. 2; James Wright, Peter Rossi, and Kathleen Daly, Under the Gun: Weapons, Crime and Violence in America (Hawthorne, N.Y.: Aldine, 1983), p. 321.

16. Bureau of Alcohol, Tobacco, and Firearms, Analysis of Operation CUE (Concentrated Urban Enforcement), interim report (Washington D.C.: February 15, 1977), pp. 133-34, cited in Paul Blackman and Richard Gardiner, Flaws in the Current and Proposed Uniform Crime Reporting Programs Regarding Homicide and Weapons Use in Violent Crime, paper presented at 38th Annual Meeting of the American Society of Criminology; Atlanta, October 29-November 1, 1986.

17. James Wright, "Second Thoughts About Gun Control," The Public Interest 91 (Spring 1988): 30-31. Professor Wright, like his co-authors, began his work an avowed proponent of strict controls; research convinced him that gun control does not work.

those in Chicago, Washington, D.C., and New York City had no effect on criminals; and 90 percent believed that if firearms ownership was banned, ordinary citizens would be more likely to be targets of armed violence.<sup>18</sup>

In short, we believe handgun bans to be a proven failure, and we see no reason to believe that semi-automatic bans would be any less of a failure.

### 2. Waiting Periods

Last summer NACOP and AFP opposed a waiting period for handgun purchases. Practical experience, as well as the conclusions of every criminologist who has studied the subject, demonstrated that criminals would easily evade any constraints on over-the-counter purchases.

As Kansas City's Chief of Police testified before this Subcommittee, criminals buy their guns on the black market, or use legal surrogate buyers. Former Chief Willis Ross, currently lobbyist for the Florida Police Chiefs Association, explains: "I think any working policeman will tell you that the crooks already have guns. If a criminal fills out an application and sends his application...he's the biggest dumbest crook I've ever seen."

Waiting periods are a failure for handgun control; they will also fail at semi-automatic control. We remind waiting period

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18. Gerald Arenberg, Do the Police Support Gun Control? (Bellevue, Wash.: Second Amendment Foundation), p. 10.

proponents that California already has a strict 15-day waiting period for handgun purchases. Yet from 1984 to 1987, Stockton murderer Patrick Purdy bought five handguns over the counter in California.

### 3. Restrictive Federal Licensing

Since 1934, anyone who wishes to buy a fully automatic weapon, such as the Thompson Submachine gun, must pass a rigorous licensing process that requires a federal fingerprint check and background investigation, a letter of permission from the local police chief, a wait of up to six months, and hundreds of dollars in fees and taxes. The system works marvelously; no licensed automatic has ever been used in a crime.

And the system does not work at all. Automatic weapons, including the hundreds of thousands of guns missing from U.S. military arsenals, are readily obtainable, even by teenage gang members. A system that cannot control full autos will not work any better on semi-autos.

#### 4. Registration

Senator Metzenbaum's bill requires all owners of "assault guns" to register themselves with the federal government, under pain of a 10 year felony jail term.<sup>19</sup> We oppose this and any other gun registration scheme.

Gun registration is essentially useless in crime detection. Police experts have long understood that tracing the history of a recovered firearm generally leads to the discovery that it was stolen from a legal owner and that its subsequent pattern of ownership is unknown.<sup>20</sup> We believe that law enforcement resources should be used to search for criminals, rather than to compile paperwork on law-abiding citizens.

Worthless in crime control, registration is simply a prelude to gun confiscation. Registration has been used for confiscation in Greece, Ireland, Jamaica, and Bermuda.<sup>21</sup> Here in Washington,

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19. Section 6(f).

20. J. Howard Mathews, Firearms Identification (Springfield, Ill.: Charles C. Thomas, 1962), pp. 77, 80; Julian Hatcher, Frank Jury, and Joe Weller, Firearms Investigation Identification and Evidence (Harrisburg, Pa.: Stackpole, 1957), pp. 177, 180, 184.

21. B. Bruce-Briggs, "The Great American Gun War," The Public Interest, (Fall 1976): 59; Donald B. Kates, Why Handguns Bans Can't Work (Bellevue, Wash.: Second Amendment Foundation, 1982), p. 16.

Gun confiscation in Jamaica was part of a severe government anticrime program, which drastically curtailed civil liberties; the program did little to stop crime in the long run but did imprison many innocent people, particularly from outcast groups such as the Rastafarians. Edward Diener and Rick Crandall, "An Evaluation of the Jamaican Anticrime Program," Journal of Applied Social Psychology (March 1979): 137-48; Dudley Allen, in Crime and Punishment in the Caribbean, R. and G. Brana-Shute eds. [Gainesville, Fl.: Center for Latin American Studies, 1980]: 29-57 [Allen was formerly the Jamaican Commissioner of Corrections].



D.C., the city council considered (but did not enact) a proposal to use registration lists to confiscate all shotguns and handguns in the city. When reminded that the registration plan had been enacted with the explicit promise to gun owners that it would not be used for confiscation, the confiscation's sponsor retorted, "Well, I never promised them anything!"<sup>22</sup> The Evanston, Illinois, police department also attempted to use state lists to enforce a gun ban.

Firearms are specifically protected by the Constitution, and it is improper to require that people possessing constitutionally safeguarded objects register themselves with the government, especially when the benefits of registration are so trivial. The Supreme Court has ruled that the First Amendment prohibits the government from registering purchasers of newspapers and magazines,

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Historians disagree about whether the Nazis used registration lists to carry out confiscations in Denmark and Norway.

22. "Wilson's Gun Proposal," Washington Star-News, February 15, 1975, p. A 12; Lawrence Francis, "Washington Report," Guns & Ammo, December 1976, p. 86.

even of foreign Communist propaganda.<sup>23</sup> The same principle should apply to the Second Amendment.

#### B. Ordinary Citizens Will Also Ignore the Law

We are greatly concerned about the breakdown in respect for the law, and the deterioration in relations between ordinary citizens and the law enforcement community. As Stanford law professor John Kaplan has observed, "When guns are outlawed, all those who have guns will be outlaws."<sup>24</sup> Prof. Kaplan observes that when a law criminalizes behavior that its practitioners do not believe improper, the new outlaws lose respect for society and the law.

Even simple registration laws meet with massive resistance. In Illinois, for example, a 1977 study showed that compliance with

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23. Lamont, DBA Basic Pamphlets v. Postmaster General, 381 U.S. 301 (1965). The U.S. Post Office intercepted "foreign Communist propaganda" before delivery, and required addressees to sign a form before receiving the items. The Court's narrow holding was based on the principle that addressees should not have to go to the trouble of filling out a form to receive particular items of politically oriented mail. Since the Post Office had stopped maintaining lists of propaganda recipients before the case was heard, the Court did not specifically rule on the list-keeping practices. One may infer that the Post Office threw away its lists because it expected the Court would find them unconstitutional.

It is true that automobiles are registered, but automobile registration is required only if the car is to be driven on public property. The Constitution does not guarantee a right to own cars, and no-one has ever used automobile registration lists for auto confiscation.

24. John Kaplan, "Controlling Firearms," Cleveland State Law Review 28 (1979), p. 8.

handgun registration was only about 25 percent.<sup>25</sup> A 1979 survey of Illinois gun owners indicated that 73 percent would not comply with a gun prohibition.<sup>26</sup> It is evident that New York City's almost complete prohibition is not voluntarily obeyed; estimates of the number of illegal handguns in the City range from one million to three million.

We do not need to speculate about the massive disobedience that registration or confiscation of semi-automatics would engender. The experience of Australia provides a ready answer.

A few years ago, two Australian motorcycle gangs used semi-automatics at a bloody shoot-out dubbed "The Milperra bikie massacre." The Labor government of New South Wales, Australia's most populous state, outlawed possession of semi-autos. But less than 1% of gun owners complied.

In the subsequent election, the N.S.W. Labor party suffered its worst loss in half a century. The party's leader resigned, admitting, "I must accept the major proportion of the blame for the defeat, particularly in terms of my decision on the gun issue. . ."

New Premier Nick Greiner rescinded the ban, stating that it was "clearly unenforceable and made criminals of decent, law-

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25. Donald B. Kates, "Handgun Control: Prohibition Revisited," Inquiry, December 5, 1977, p. 20, n. 1.

26. David Bordua, Alan Lizotte, and Gary Kleck, Patterns of Firearms Ownership, Use, and Registration in Illinois, (Springfield, Ill.: Illinois Law Enforcement Commission, 1979), p. 253.

abiding citizens."

Unlike the United States, Australia has no Constitutional right to bear arms, and has a gun ownership rate of only half the United States level. If laws against semi-automatics meet such intense resistance in Australia, it is reasonable to expect even greater resistance in America. In a world where the first offense of knife-point robbery often leads to nothing more than probation, it is morally outrageous to impose ten-year prison terms on American citizens who disobey a registration law.

The law enforcement community already has its hands full catching the existing criminals. Please do not create any more.

#### IV. ANTI-GUN ORGANIZATIONS ARE ALONE IN THEIR ATTEMPT TO BAN ALL GUNS

##### A. Goals of The Anti-gun Groups

The National Coalition to Ban Handguns and Handgun Control Inc. are the two leading proponents of greater government control on semi-automatic weapons. While these groups by their very name claim to be interested only in handguns, they are now at the forefront of a campaign to outlaw long guns.

In fact, Senator Metzenbaum's bill, as well as Representative Berman's bill, allows the banning not just of AK-47s and Uzis, but of nearly every long gun in the United States. These bills define an "assault weapon" as any gun capable of accepting a box-type

magazine (ammunition clip) of more than 20 bullets. Any gun that can accept a magazine can accept a magazine of more than 20 bullets. The magazine receptacle in a rifle or pistol cannot distinguish how many bullets there are in the magazine. Many hunting shotguns also have integral tubular magazines; these guns also could theoretically accept a magazine of more than 20 rounds.

Thus, by giving the Secretary of Treasury the power to ban any gun which can accept a magazine of more than 20 rounds, these bills allow a federal official to outlaw almost every rifle and pistol in the United States, as well as many shotguns.<sup>27</sup>

Of course hunting guns would not be outlawed the first year the bills are in effect. But in future years, there will already be a law in place that will allow the prohibition of hunting guns without even a vote of Congress.

Several years ago, an official with the National Coalition to Ban Handguns was asked why her group did not attempt to ban all guns. She responded, "We didn't go after the long gun because we don't want all those hunters on our back."

With the passage of this legislation, anti-gun organizations will have an administrative vehicle for circumventing the political clout of hunters, and banning nearly all firearms.

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27. The bills do require that guns which Treasury outlaws be "substantially identical" to particular "assault guns" such as the AK-47. The crucial term "substantially identical" is not defined. As noted above, the Bureau of Alcohol, Tobacco and Firearms has testified that the AK-47, except for outward appearance, is substantially identical to standard hunting rifles.



**B. Defection of the Police from the Anti-gun Camp**

Because the anti-gun organizations are pushing for such extreme, unworkable legislation, they have been deserted even by the police groups which were their former allies.

During the debate last summer on the waiting period for handgun purchases, Handgun Control Inc. enjoyed a certain amount of support from police organizations.

Of course police support was not nearly so broad as HCI claimed. In a National Association of Chiefs of Police membership poll, 59% stated that a national waiting period would not be helpful.

Still, many big city chiefs, such as Mr. Joe Casey of Nashville, Tennessee, did support a waiting period. Whether that support extended to the rank and file is not at all clear. The head of the Memphis police union, for example, flew to Washington D.C. to campaign against the waiting period.

Whatever the feelings of actual police officers, Handgun Control Inc. did assemble a notable collection of police lobbies, dubbed the Law Enforcement Steering Coalition, which worked hard for a waiting period.

Significantly, the Law Enforcement Steering Coalition has declined to endorse restrictions on semi-automatics. Indeed, only one national police lobby (the National Association of Police

Organizations) is working for semi-automatic control. The desertion of even Handgun Control's most loyal police groups is a testimony to the profound skepticism with which the majority of the law enforcement community views restrictions on semi-automatics.

#### V. IS THE CONSTITUTION OBSOLETE?

It is sometimes argued that while the Second Amendment does guarantee a right to bear arms, it does not guarantee a right to own especially deadly weapons that the Constitution's framers never imagined, such as today's semi-automatics. We disagree with this approach to Constitutional interpretation.

James Madison never watched television, or talked on the telephone. Yet the first amendment protects the speech of TV reporters, and the fourth amendment protects the privacy of telephone conversations. The Bill of Rights did not speak of particular technologies, but of categories of rights: the freedom of speech, the right to keep and bear arms, the right to freedom from searches without probable cause. As technology creates new ways to exercise these rights, the Constitution provides a continuing structure for their protection.

It is true that an individual who misuses a semi-automatic today can shoot more people than could an individual misusing a flintlock rifle 150 years ago.<sup>28</sup> Yet if greater harm were

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28. It should be noted that the Stockton murders were not made worse because Patrick Purdy owned an AK-47. While that gun can fire hundreds of rounds in minutes, Purdy did not approach the maximum firing speed. He fired approximately 110 rounds in six

sufficient cause to invalidate a right, there would be little left to the Bill of Rights.

Virtually every freedom guaranteed in the Bill of Rights causes some damage to society, such as reputations ruined by libelous newspapers, or criminals freed by procedural requirements. The authors of the Constitution knew that legislatures were inclined to focus too narrowly on short term harms: to think only about society's loss of security from criminals not caught because of search restrictions; and to forget the security gained by privacy and freedom from arbitrary searches. That is precisely why the framers created a Bill of Rights -- to put a check on the tendency of legislatures to erode essential rights for short-term gains.

Since the Constitution was adopted, virtually all of the harms that flow from Constitutional rights have grown more severe:

\*Today, if an irresponsible reporter betrays vital national secrets, the information may be the enemy's headquarters in a few minutes, and may be used to kill American soldiers and allies a few minutes later. Such harm was not possible in an age when information traveled from America to Europe by sailing ship.

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minutes. Anyone who was willing -- as Purdy apparently was -- to spend some time practicing with guns, could have speedily reloaded even a simple bolt-action rifle, and fired nearly as many shots in the same time period.

Moreover, medical technology has greatly outstripped firearms technology in the past two centuries. Because gunshot wounds are much less likely to result in fatality today, a criminal firing a semi-automatic gun for a given period (such as six minutes) today would kill fewer people today than a criminal firing a more primitive gun two hundred years ago.

\*Similarly, an inappropriate leak of information in a superpower crisis could harden negotiating positions, leading at the worst to nuclear war. Previously, a leak might precipitate a war, but could not destroy the planet.

\*As Gary Hart learned the hard way, a single act of gutter journalism can wipe out in a week a decades-long career of public service. In the early years of the Constitution, journalists also printed stories of sex and politics, but the slower movement of information kept one tale of indiscretion from growing to such destructive proportions.

\*Correspondingly, a show like "60 Minutes" can wrongfully ruin a person's reputation throughout the nation, a feat no single newspaper could have accomplished before.

\*In earlier times, strong community ties and traditional values made young people less susceptible to religious charlatans. But today, freedom of religion can kill people -- as we learned at Jonestown -- and can cripple minds -- as we see in victims of Sun Myung Moon's 20th century brainwashing techniques.

\*Criminal enterprises have always existed, but the proliferation of communications and transportation technologies such as telephones and automobiles makes possible the existence of criminal organizations of vastly greater scale -- and harm -- than before.

The harms caused by the advances of personal weapons technology rank somewhere in the middle of the above list. Semi-automatics can kill people, rather than merely reputations. But studies by the National Institute of Justice, as well as expert police testimony on Feb. 13th before the California Legislature, show that criminals only rarely use assault rifles. Criminals prefer the portability and concealability of handguns and sawed-off shotguns. A few days ago, Lt. James Moran, commander of the Ballistics Unit for the New York Police Department, told the New York Times the same thing.

Criminals may, like the police they emulate, be turning to semi-automatic handguns in increasing numbers. If there were a

policy that could deny such guns to criminals who know the black market well enough to buy cocaine by the pound, we would favor it. As noted above, no such policy exists, or can exist.

Gun control advocates have paraded before this Subcommittee witnesses who were victims of semi-automatics. Their stories are heart-wrenching. Yet the absolute number of fatalities from semi-automatics is far less than the number from most other types of gun, or from knives, or from hands and fists. It is also less than the number of fatalities caused by criminals set free by the Miranda warning, or the exclusionary rule.

We do not believe that any of our Constitutional rights should be put aside because they cause more harm now than they used to. If the Constitution is obsolete -- and we do not believe it is -- the proper approach is to amend it, not to flout it.<sup>29</sup> Constitutional rights are for all time.

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29. One clearly obsolete provision of the Constitution is the guarantee of federal jury trials when the amount in controversy exceeds \$20. Due to inflation, a \$20 case today is immensely less significant than a \$20 case from 200 years ago. Today, the \$20 rule impedes judicial efficiency by guaranteeing a jury trial for even the pettiest of cases. Yet no-one suggests that a legislature could simply ignore the 7th amendment because of obsolescence. The only remedy is to propose an amendment.



# National Council for a Responsible Firearms Policy, Inc.

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Statement submitted by David J. Steinberg, Executive Director, National Council for a Responsible Firearms Policy, to the U.S. Senate Committee on the Judiciary (Subcommittee on the Constitution) for a hearing on proposed legislation to ban civilian acquisition of military-style assault rifles  
February 21, 1989

The National Council for a Responsible Firearms Policy is the oldest of the organizations devoted solely to advocacy of strict limitations on civilian accessibility to firearms. The Council is the only such organization concerned with all kinds of firearms. The organization was formed in 1967 under the leadership of the late James V. Bennett, who for some 27 years had been the widely respected Director of the Bureau of Prisons in the U.S. Department of Justice.

The Council is neither "pro-gun" nor "anti-gun" -- just anti the accessibility of guns to individuals who lack the crucial qualifications for responsible possession of such extraordinarily destructive devices, and pro policies and programs aimed at preventing such accessibility (even if absolute prevention is an impossibility). The "responsible firearms policy" to which the Council is committed is a policy fully responsive to the imperatives of public safety and fully respectful of the rights and privileges of all Americans, those who own guns and those who do not. We have never advocated banning any firearm except for the very small, low-quality handguns which no qualified, self-respecting, public-spirited gun owner would want to possess and which are so often used in crime (the so-called "Saturday Night Special", if an appropriate definition is devised).

In the context of the present hearing, we are deeply concerned over the proliferation of military-style assault rifles for public sale. The highly destructive, indeed the deadly, use of these semi-automatic (easily made automatic) weapons in recent months is a devastating development demanding the nation's urgent attention at all levels of government. The easy acquisition of such weapons by anyone who seems to meet the minimum-age requirement, and completes (even if truthfully) the required federal form upon purchase of the firearm from a licensed gun dealer, must be stopped with deliberate speed, as must their easy transferability (however legal) to anyone else.

Respectful of the legitimate firearms interests of countless law-abiding gun owners, our Council will not propose a ban on this (or any) firearm unless a ban is the most practical, reasonable answer to the particular problem of firearms violence consistent with the reasonable rights of rational, law-abiding gun owners within the framework of the reasonable rights and pressing needs of society as a whole. The day may come when a ban on public accessibility to military-style assault rifles clearly meets this standard. The strong opposition to a ban from gun owners who use similar firearms for legitimate purposes suggests that such a time has not arrived. But, clearly and compellingly, something must be done concerning the very real possibility of such weapons falling into the wrong hands.

The least that can be done is requirement of a waiting period of at least seven days following completion of the federal form -- a period to permit government authorities to determine (on the basis of readily available information) if the prospective purchaser of a semi-automatic rifle from a licensed gun dealer is truthful about his or her identity and the affirmation of not being a felon or in some other prohibited category. Such a waiting period, however, is hardly enough. Not being in a prohibited category should not ipso facto permit the prospective buyer to acquire a gun so extraordinarily powerful. Or indeed any gun. The nation needs, and our Council has long proposed, a licensing requirement -- with reasonable

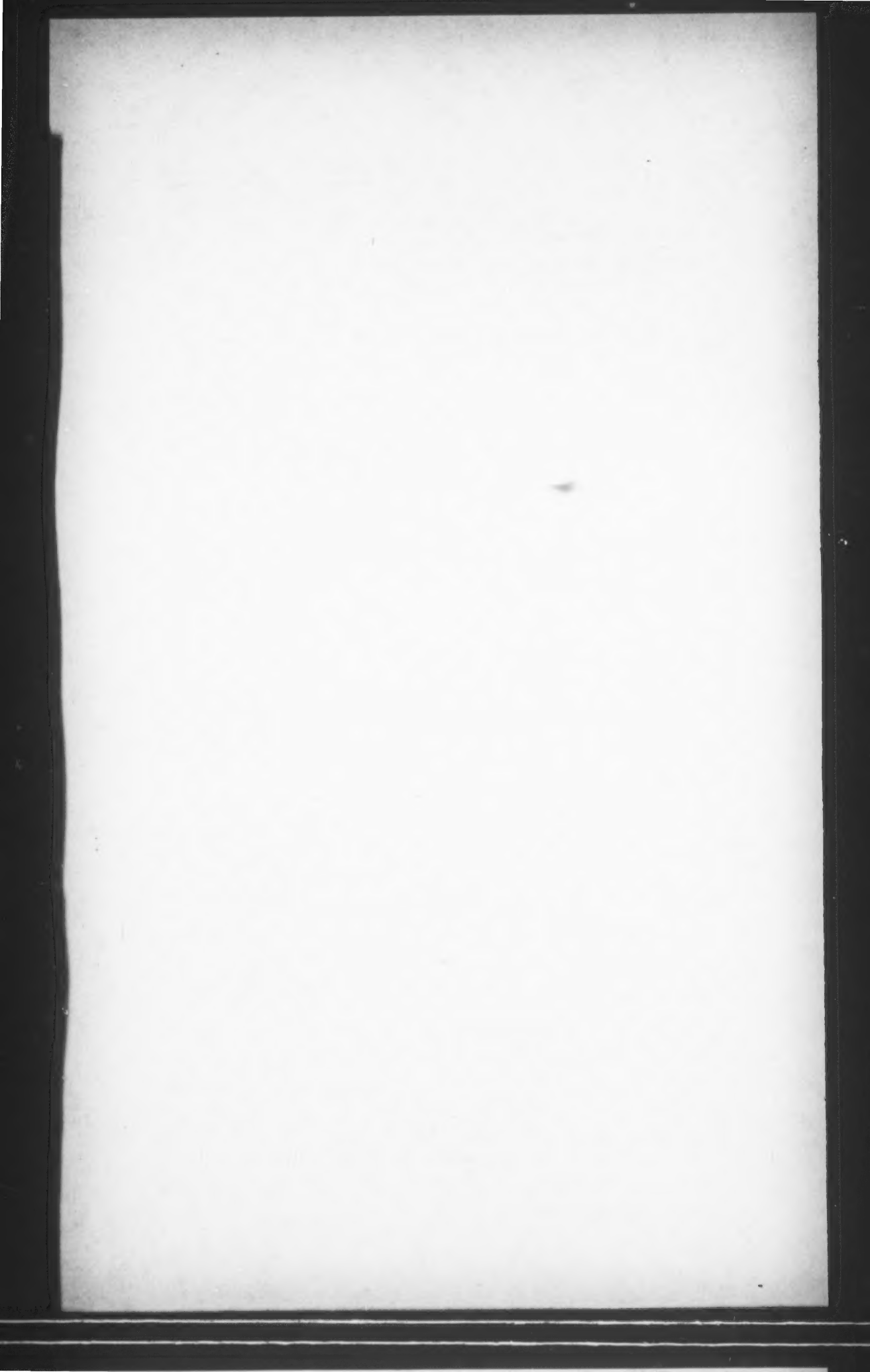
standards and reasonable fees -- for legal acquisition and possession of usable firearms of any kind. Also, a way must be found (gun registration or some other method) to hold each gun owner strictly and legally responsible and accountable for the safe keeping, legal use and legal disposition of every gun he or she may own (unless its loss or theft is properly reported to the police).

Until some practical way can be found to reach the millions of guns already in private possession, the licensing requirement should at least apply to future acquisitions of guns from licensed dealers. Even then, a gun-owner license should not automatically qualify that individual to acquire all kinds of firearms -- certainly not a gun so powerful as a semi-automatic assault rifle. Just as a regular automobile driving license does not permit the licensee (in many, maybe all, states) to legally drive a truck or a tractor or a bus or a motorcycle, so a basic gun-owner's license should not authorize acquisition of a military-style assault rifle. A special stamp (or the like) should appear on the license for additional authorizations pertaining to more powerful types of firearms.

Until an appropriate licensing system can be instituted (at least covering guns as powerful as semi-automatic rifles), we propose that the federal government move as quickly as possible to restrict the sale and transfer of assault-rifle ammunition for private use. Beyond the assault-rifle issue, we urge that reasonable, practical controls be established on public sales of all types of firearms ammunition -- controls that are fair to law-abiding gun owners and conceivably helpful in diminishing the firepower of individuals inclined to use firearms of any kind for illegal purposes. The gun owner's license we propose should suffice for buying ammunition for the category of gun covered by the license. We are aware that ammunition can be made (just as guns can be made) by individuals familiar with the techniques and with access to materials readily available to all and sundry. But this possibility does not invalidate the efficacy of our proposal, just as the ability of unlicensed drivers to drive defective automobiles well beyond the speed limit does not invalidate the merit of requiring a driver's license for operating an automobile, requiring that cars be inspected, or setting speed limits.

The assault rifle has moved to center stage right now in the debate about "gun control". But the nation must lose no more time in addressing the entire firearms issue. Most of the gun-control movement (concentrating on handguns) has itself lost too much time neglecting the overall firearms issue. The gunman who recently produced so much carnage in a California schoolyard with an AK-47 assault rifle could have easily done unspeakable damage with a regular hunting rifle. The easy accessibility of all kinds of guns to persons not qualified to use them responsibly is a clear and present danger that demands our best efforts. When Senator Robert F. Kennedy told a subcommittee of the Senate Committee on the Judiciary in 1964, "It is past time that we wipe this stain of violence from our land," he wasn't talking about a particular type of firearm; he was talking about all kinds of guns. The nation should earnestly address the problem posed by military-type rifles in the wrong hands. But, if it addresses that problem alone, it should do so without illusions. Strict control of only assault rifles today neglects the possibility of escalated violence with other firearms tomorrow. Firearms violence of whatever variety has already reached a peril point.

Yes, as the "gun lobby" mantra intones, guns don't kill, people kill. But people too often kill with guns (the most conclusive of weapons), and now the assault rifle has acquired popularity in this deadly arsenal. Stiff sentencing for the criminal use of these or any other firearms -- the long-standing panacea of those who oppose "gun control" -- may deter some individuals from criminal use of these weapons. But, whatever the extent of such deterrence, stiff mandatory sentences for using guns in crime are no substitute for stiff mandatory standards for the legal acquisition and responsible possession of firearms -- the assault type or any other type.



## HEARING ON S. 386 AND S. 747

FRIDAY, MAY 5, 1989

U.S. SENATE,  
SUBCOMMITTEE ON THE CONSTITUTION,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Paul Simon (chairman of the subcommittee) presiding.

Also present: Senators Specter, Kennedy, Metzenbaum, DeConcini, and Leahy.

### OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. The subcommittee will come to order. We are holding another hearing today on the question of assault weapons. This hearing was requested by Senator Specter specifically so the administration would have an opportunity to express its opinions on the legislation that is pending. Unfortunately, the administration, which has been invited to testify, has not determined yet what its position will be on the legislation.

I just came from a hearing of the Senate Foreign Relations Committee, where the question of the confirmation of the new Director of the Arms Control and Disarmament Agency was before us.

We face a problem in the international arena on the arms race. We, unfortunately, face an arms race at home, too, and the question is how do we responsibly deal with that. I would like to show an ad that just appeared in my hometown paper in rural southern Illinois. I don't know if you can see that out there: "Last Chance to Own an Assault Type Pistol, only \$399; Limit 3 Per Customer." Among other things, it advertises a 32-round magazine.

I think we have to recognize we have a problem. Both the bill by Senator Metzenbaum and Senator DeConcini call for additional imprisonment if you are found guilty of a crime using one of these weapons. I think just about everyone is in agreement upon that, but we cannot seem to reach any kind of an accord on what we ought to do in the way of banning certain types of weapons.

I called a meeting in my office yesterday with representatives of the National Rifle Association and representatives of Senator DeConcini and Senator Metzenbaum, but there was no agreement reached and, frankly, it looks to me unlikely that we are going to reach any agreement.

But the problem is with us. I hope we can get action, and get action quickly, on a problem that affects the lives of a great many people.

[Text of Senate bill 747 follows:]

101ST CONGRESS  
1ST SESSION

## S. 747

To amend chapter 44 of title 18, United States Code, regarding assault weapons.

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### IN THE SENATE OF THE UNITED STATES

APRIL 11 (legislative day, JANUARY 3), 1989

Mr. DeCONCINI introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend chapter 44 of title 18, United States Code, regarding assault weapons.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Antidrug, Assault  
4       Weapons Limitation Act of 1989".

5       SEC. 2. Section 922 of title 18, United States Code, is  
6       amended by adding at the end thereof the following:

7       “(q)(1) Except as provided in paragraph (2), it shall be  
8       unlawful for any person to transfer, import, transport, ship,  
9       receive, or possess any assault weapon.

10       “(2) This subsection does not apply with respect to—



1           “(A) transferring, importing, transporting, ship-  
2           ping, and receiving to or by, or possession by or under,  
3           authority of the United States or any department or  
4           agency thereof, or of any State or any department,  
5           agency, or political subdivision thereof, of such an as-  
6           sault weapon, or

7           “(B) any lawful transferring, transporting, ship-  
8           ping, receiving, or possession of such a weapon that  
9           was lawfully possessed before the effective date of this  
10          subsection.”.

11          SEC. 3. Section 921(a) of title 18, United States Code,  
12 is amended by adding at the end thereof the following:

13           “(25) The term ‘assault weapon’ means—

14           “(A) any firearm designated as an assault  
15          weapon in this paragraph, including:

16           “(i) Norinco, Mitchell, and Poly Tech-  
17          nologies Avtomat Kalashnikovs (all models),

18           “(ii) Action Arms Israeli Military Indus-  
19          tries UZI and Galil,

20           “(iii) Beratta AR-70 (SC-70),

21           “(iv) Colt AR-15 and CAR-15,

22           “(v) Fabrique Nationale FN/FAL, FN/  
23          LAR, and FNC,

24           “(vi) MAC 10 and MAC 11,

25           “(vii) Steyr AUG,

1                   “(viii) INTRATEC TEC-9, and

2                   “(ix) Street Sweeper and Striker 12;

3                   “(B) all other models by the same manufac-  
4                   turer with the same design which may have slight  
5                   modifications or enhancements including a folding  
6                   stock; adjustable sight; case deflector for left-  
7                   handed shooters; left-handed fire adaptor; shorter  
8                   barrel; wooden, plastic, or metal stock; large size  
9                   magazine; different caliber, provided the caliber  
10                  exceeds .22 rimfire; bayonet mount; tripod or  
11                  bipod mount; or flash suppresser; and

12                  “(C) any other firearm with an action design  
13                  identical or nearly identical to an assault weapon  
14                  specified in subparagraph (A) which has been re-  
15                  designed from, renamed, renumbered, or patterned  
16                  after one of such specified assault weapons re-  
17                  gardless of the company of production or country  
18                  of origin, or any firearm which has been manufac-  
19                  tured or sold by another company under a licens-  
20                  ing agreement to manufacture or sell an identical  
21                  or near identical assault weapon as those specified  
22                  in subparagraph (A), regardless of the company of  
23                  production or country of origin.”.

24                  SEC. 4. Chapter 44 of title 18, United States Code, is  
25                  amended—

1 (1) by adding at the end thereof the following new  
2 section:

3 **"§ 931. Additional assault weapons**

4 "The Secretary, in consultation with the Attorney Gen-  
5 eral, may, when appropriate, recommend to the Congress the  
6 addition or deletion of firearms to be designated as assault  
7 weapons."; and

8 (2) in the table of sections by adding at the end  
9 thereof the following new item:

"931. Additional assault weapons."

10 SEC. 5. Section 922 of title 18, United States Code, is  
11 further amended by adding at the end thereof the following:

12 "(s)(1) Whoever, during and in relation to the commis-  
13 sion of a crime of violence or a drug trafficking crime (includ-  
14 ing a crime of violence or drug trafficking crime, which pro-  
15 vides for an enhanced punishment if committed by the use of  
16 a deadly or dangerous weapon or device) for which he may be  
17 prosecuted in a court of the United States, uses or carries an  
18 assault weapon, shall, in addition to the punishment provided  
19 for the commission of any such other crime committed by the  
20 defendant, be sentenced to a term of imprisonment for not  
21 less than 5 years.

22 "(2) For purposes of this subsection, the term 'drug traf-  
23 ficking crime' means any felony violation of Federal law in-  
24 volving the distribution, manufacturing, or importation of any

1 controlled substance (as defined in section 102 of the Con-  
2 trolled Substances Act).”.

3 SEC. 6. Section 922 of title 18, United States Code, is  
4 further amended by adding at the end thereof the following:

5 “(t)(1) It shall be unlawful for any person to sell, ship,  
6 or deliver an assault weapon to any person who does not fill  
7 out a form 4473 (pursuant to 27 CFR 178.124), or equiva-  
8 lent, in the purchase of such assault weapon.

9 “(2) It shall be unlawful for any person to purchase,  
10 possess, or accept delivery of an assault weapon unless such  
11 person has filled out such a form 4473, or equivalent, in the  
12 purchase of such assault weapon.

13 “(3) If a person purchases an assault weapon from  
14 anyone other than a licensed dealer, both the purchaser and  
15 the seller shall maintain a record of the sale on the seller’s  
16 original copy of such form 4473, or equivalent. The pur-  
17 chaser and seller shall both retain copies of such form for all  
18 subsequent transactions regarding such assault weapon.

19 “(4) Any person who, prior to the effective date of this  
20 subsection purchased an assault weapon which required re-  
21 tention of such form 4473, or equivalent, pursuant to the  
22 provisions of this subsection, shall, within 90 days after the  
23 issuing of regulations by the Secretary pursuant to paragraph  
24 (5) of this section, request a copy of such form from the sell-  
25 ing dealer or in the event such dealer has discontinued oper-

1 ation, from the Bureau of Alcohol, Tobacco and Firearms.  
2 Such dealer or Bureau shall forward a copy of such form to  
3 the purchaser in accordance with regulations prescribed by  
4 the Secretary pursuant to paragraph (5) of this section.

5 “(5) The Secretary shall, within 90 days after the date  
6 of enactment of this section, prescribe regulations for the re-  
7 quest and delivery of such form 4473, or equivalent.”.

8 SEC. 7. Section 924 of title 18, United States Code, is  
9 amended by—

10 (1) redesignating subsections (f) and (g), and any  
11 references to such subsections, as added by section  
12 6211 of Public Law 100-690, as subsections (g) and  
13 (h), respectively; and

14 (2) adding at the end thereof the following:

15 “(i) Whoever knowingly fails to acquire such form 4473,  
16 or equivalent (pursuant to 27 CFR 178.124), with respect to  
17 the lawful transferring, transporting, shipping, receiving, or  
18 possessing of any assault weapon, as required by the provi-  
19 sions of this chapter, shall be fined no more than \$1,000, or  
20 imprisoned for not more than 6 months, or both.”.

21 SEC. 8. Section 922(g)(1) of title 18, United States  
22 Code, is amended by inserting before the semicolon at the  
23 end thereof the following: “or a violation of section 924(i) of  
24 this chapter”.



1        SEC. 9. Unless otherwise provided, this Act and the  
2 amendments made by this Act shall become effective 30 days  
3 after the date of enactment of this Act.

Senator SIMON. Senator Specter.

**OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR  
FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman. I thank you for convening this hearing today. There is an extensive amount of work which continues to be done on this subject to try to balance very substantial competing interests.

Since we had the last hearing, my staff and I have spent many hours with the technical experts going through even a wider array of weapons than those presented here for the photo opportunity this morning.

In addition to consulting with Mr. Pasco and Mr. Ed Owens and others at the Bureau of Alcohol, Tobacco, and Firearms, I have consulted with Mr. Uzi Gal, who lives in the Philadelphia area, and I had not known that the Uzi weapon was named after a man, but I found out that it was—Mr. Uzi Gal.

I had a meeting with him in my Philadelphia office, talked to him about the technical situation with respect to this kind of a weapon, asked him to meet with experts from the Bureau of Alcohol, Tobacco and Firearms.

This week, Mr. Gal was in Washington meeting with Mr. Ed Owens, Mr. Jim Pasco, and others, including members of my staff in an extensive meeting where I participated, continuing to see if there is some way that a definition can be structured so that the assault weapons are kept out of the hands of criminals and hunters and marksmen can have access to semiautomatic rifles.

As of this moment, although the work is ongoing, nobody has yet been able to come up with that kind of a definition and we continue to search for it. Frankly, I am still hopeful we will find it.

I recall just last year the problems that this subcommittee had with the plastic gun and it was a hotly contested, highly controversial subject, and after a lot of hard work we found an answer where sufficient metal was added so that it could be detected before being taken on aircraft, and the very strong interests on both sides were accommodated.

I am still hopeful, as I say, that we can find a definition which will accommodate legitimate interests and which will exclude the criminal interests.

I regret that we do not have an administration witness here today because there are at least two aspects to the consideration of this issue. One is the technical aspect where I don't know that testimony will be helpful now because that study is ongoing.

The other aspect is the public policy consideration, and as I said at our markup about 2 weeks ago, I think it is important to have a position from the administration. The administration was requested to be present, as the chairman has stated, but they cited a protocol which calls for 2 weeks' notice before they will come to a Judiciary Committee hearing under rules established with the chairman of the full committee, Senator Biden, and the Attorney General, Department of Justice.

I had requested that this hearing be scheduled at a time when we could give them the full time of the protocol so that no one

would have any reason to say, technical or otherwise, why they would not be here, and I had made that request to the chairman and it was denied.

I am still hopeful that we will have a position from the Department of Justice on this matter because, if legislation is to be enacted, it is going to require the President's signature unless we can override a Presidential veto. So, I think the administration's input continues to be very important, and I, for one, intend to continue to press them to see if we can get their policy judgment on the subject.

There is a very extensive list of witnesses and I join in thanking all of the witnesses for coming as we continue to work on this very important problem.

Thank you, Mr. Chairman.

Senator SIMON. Thank you, Senator Specter. Let me state—so there is no misunderstanding here, we had the markup hearing April 19, and I indicated then we would schedule a hearing as quickly as we could. I don't know what the time is between April 19 and May 4, but even if there is not technically 2 weeks there—and it looks to me like it comes very close to that—I don't think we ought to be resting on technicalities. Whether it is 10 days or 2 weeks or 15 days, we ought to be able to move on this legislation.

Senator SPECTER. Mr. Chairman?

Senator SIMON. Senator Specter.

Senator SPECTER. Mr. Chairman, I don't believe we ought to rest on technicalities either, and I think the administration ought to be here. I say that flatly, and I have said that to the administration, but when they cite a 2-week protocol, this committee is giving them a reason not to appear.

When the chairman says that he indicated on April 19 that there would be another hearing, that isn't so. We had a long argument about it and there was no statement that there would be a hearing.

After that markup was completed, I wrote to the chairman and asked for a hearing, and it was substantially after April 19 that a hearing was scheduled. Now, if we give the Justice Department 2 weeks' notice, they don't have any reason to come back and say that we aren't following the protocol. That is my only point.

Senator SIMON. Well, I appreciate your saying that the administration should be here. There is no rule of the committee that there is 2 weeks' notice. Second, we set the date, I believe, the very next day. We had the hearing on Thursday, April 19, and on April 20 a date was set.

Senator Metzenbaum.

Senator SPECTER. Well, just a minute, Mr. Chairman. If you set the hearing, I didn't know about it and I don't think the Department of Justice knew about it. When we talk about a rule, I am not saying there is a rule; I am saying there is a protocol.

We face a sticky situation here and we ought to set a record to get the administration's position, but I think that point has been made.

Senator SIMON. Senator Metzenbaum.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S.  
SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. It is almost like being in wonderland to hear us discussing about whether the administration got 2 weeks' notice or 10 days' notice, or whatever the case may be.

As the principal author of this legislation, let me make it clear, I am prepared to work with the NRA, to work with the President of the United States, to work with Mr. Bennett, to work with anybody who wants to work with us. The law enforcement community wants legislation enacted. I support their position, and I believe that the people of this country want legislation enacted.

I am grateful to Senator Specter for his role in attempting to bring about some solution to this controversy, this continuing difference that exists between those of us, including the people of this country who feel a need for legislation. I am grateful to Senator DeConcini for his efforts to fashion legislation that deals with this problem.

I have spoken directly to the President of the United States and said, Mr. President, I am not looking for a political victory; I am looking for legislation that will remove from the streets of America these assault weapons that, in the hands of drug dealers and drug lords, are mowing down our law enforcement people and mowing down innocent people as well, and I am prepared to work with you in any way possible.

I have said the same thing to Mr. Bennett, and said let us reason together. I want to make that open, clear. The administration says we will give you an answer in 2 weeks; we will give you a bill that we can live with. And I am not talking about a bill that brings in capital punishment and brings in the *Miranda* rule and brings in a host of other issues. I am talking about a bill that deals with assault weapons.

If that is the price we have to pay, I will go to the chairman of the subcommittee and the chairman of the overall committee and say, look, give them 2 more weeks and they will give us an answer. And when the administration says that is what they want, I say to you, as the author of this legislation, I will play a leading role in seeing to it that they get it.

Frankly, it has been nearly 3 months since this committee's last hearing on the issue of assault weapons, and testifying on behalf of our Nation's police officers were Chief Daryl Gates of the Los Angeles Police Department and Sergeant William Pattison of the National Association of Police Organizations.

I was interested in Chief Gates' testimony at that time because I remember how hard he attempted to emphasize that philosophically, he was really not a person who supported many of the concerns that I have expressed in the U.S. Senate, but really was more supportive of those on the other side of the aisle.

And I don't consider this to be a political issue, but I remember him specifically saying, Senator Specter, I want you to understand, I am more attuned to your political concerns than I am to Senator Metzenbaum's. And I accept that as a fact because I think that is the way it ought to be. I don't think this is any political game.



Now, Chief Gates, in addressing himself to the issues before us, said to the subcommittee, "The police of America are pleading with you. We need something done, we really do, and we are asking you to get it done."

In the last 3 months, many of us have been working to try and get something done. I have continued my discussions with the law enforcement community and my colleagues in the Congress, and I have listened to the legitimate concerns of gun owners.

As a result of these discussions, I amended my bill and offered a substitute 2 weeks ago to this subcommittee. Let me briefly mention some of the key changes that were made.

First, the list of specific weapons covered has been expanded at the suggestion of the law enforcement community. Second, I have made it clear that no other weapons, no other weapons, can be barred without new legislation. Third, the registration requirement has been dropped. Fourth, the penalties for using an assault weapon in a crime have been increased to a mandatory 10 years—the toughest penalty of any proposal. And, fifth, the bill now applies only to the future sale of magazines.

I have tried to be conciliatory. I have tried to be reasonable, I have tried to be compromising. Since our last hearing on this issue, my colleague, Senator DeConcini, has introduced his own proposal, Senate bill 747. I want to commend him for that action in this area. While our bills differ, I want to continue to work with him to see if some overall compromise can be reached.

Also, since our last hearing, the Bush administration has taken some action on this issue. The day after Secretary Bennett took office as Director of National Drug Control Policy, the Bush administration, at Secretary Bennett's recommendation, imposed an import ban on five types of assault weapons. This was followed up a few weeks later with a ban on an additional 24 imported assault weapons.

I applauded the President for that action, but it is only a first step. This import ban covers only about 25 percent of the assault weapons sold in this country. The other 75 percent are manufactured domestically. Legislation such as mine is needed to stop the sale of these weapons.

I have talked with the President about the issue, and I know that he, too, is concerned. I am hopeful that he will join his many friends in the law enforcement community and support my legislation.

But I must say that I am disappointed that there is an empty chair in this room. No one from the administration accepted this subcommittee's invitation to appear before us today and give us the President's view on the problem. We are still open to hear the President's view and we would welcome it. I hope that we will be hearing from him soon.

But in the meantime we must push ahead, and I want to say to the chairman of this subcommittee, he has been very receptive to trying to be fair, and to trying to be open to holding a hearing when Senator Specter requested it. And I think it is an indication of his efforts in this direction that as recently as yesterday he held a meeting in his own office to try to bring about some compromise.



To me, one of the most frustrating things about the effort to control these weapons of war has been the lies and the distortions spread by some opponents of this legislation. The NRA has done mailings and taken out newspaper ads saying that my bill would ban almost all semiautomatic firearms, and it doesn't do anything to punish the criminals who would use these weapons. Frankly, they know better than that.

My bill makes clear that it would only affect a specific list of 25 assault weapons. It does not affect semiautomatic firearms that are popular with hunters and sportsmen, and I want to reemphasize that; it does not affect semiautomatic firearms that are popular with hunters and sportsmen. It does affect the semiautomatic weapons popular with gangs and drug dealers.

Many States already limit the number of rounds a hunter may have in his magazine. This is because hunting is a sport, not a slaughter. No sane person would take satisfaction in spraying 20 rapid-fire rounds into a deer.

While the NRA claims that I am not interested in punishing criminals, the fact is that my bill calls for the toughest penalties of any of the assault weapon bills in Congress. The mandatory penalty for use of an assault weapon during the commission of a crime would be 10 years. That is an additional 10 years on top of the penalty for the underlying offense.

Three months ago, I said that the American people were demanding action. Today, that is still the case. No legislation that we can draft will guarantee an end to senseless violence by persons with firearms, but my bill will help prevent the most deadly weapons from ending up in the hands of the most dangerous people. And if that will help prevent one more police officer from being gunned down, or one more innocent child from being slaughtered, we must act. I urge my colleagues to join me in supporting this much-needed public safety legislation.

Thank you, Mr. Chairman.

Senator SIMON. Senator Kennedy.

#### OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman. At the outset, I want to commend Senator Metzenbaum, as well as Senator DeConcini, for the leadership that they have provided in this extremely important area to the American people, and commend you, Mr. Chairman, for your fairness in both holding these hearings and being interested to hear all sides.

I have had the good fortune to be chairman of the full Judiciary Committee, and I can tell you, Mr. Chairman, whenever the administration wants to appear and wants to make a presentation about its position, it doesn't resort to the technicalities or protocols; I, too, am disappointed that the administration is not here to speak out on this issue.

Second, I think it is important that all of us understand the point that Senator Metzenbaum has made in the latter part of his statement, and that is that no one who is supporting this legislation is not serious about dealing with all the needs that we have, or

using all the resources we have to deal with the criminal element in our society. We all favor that, and Senator Metzenbaum has indicated that, and I think that is an important part of this legislation.

But the fact is, Mr. Chairman, too many of our inner cities are free-fire zones today—free-fire zones. And in too many instances, drug gangs are armed as well or have stronger or more effective weapons than many of those in our law enforcement community.

All that the Metzenbaum legislation is prepared to do is to take the simple logic of the President's action in March of this year that says that we will halt the ban. He wasn't worried about definitions. He identified and listed the specific weapons in this legislation.

I would welcome either this panel of law enforcement witnesses here to go down those lists and say which ones should not be banned. We don't need to wait for further definitions by the administration. Take these four gentlemen, Mr. Chairman, and take the list of assault weapons that is in the legislation of Senator Metzenbaum and check them off; take your guidance from the best in the law enforcement community.

We saw a lot of blue uniforms, Mr. Chairman, in the course of the last campaign. Remember those magnificent backdrops of all those men and women in law enforcement uniforms all across the country. Well, where are you now, Mr. President? Where are you now?

We welcome these four individuals and appreciate their coming here to testify; and I hope we are going to be able to get action before the Judiciary Committee and on the floor. If we haven't got the courage to deal with this legislation, Mr. Chairman, this country is going to be in difficult shape, given the challenges which we are facing here and around the world.

I thank the Chair.

Senator SIMON. Senator DeConcini.

**OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S.  
SENATOR FROM THE STATE OF ARIZONA**

Senator DeCONCINI. Mr. Chairman, thank you very much for holding these hearings. Also, I want to pay particular thanks to the Treasury Department, Alcohol, Tobacco and Firearms, and particularly Jim Pasco, for bringing the weapons here at my request today so we can have an idea of what we are talking about and some comparison.

Further discussions on the problems associated with abuse of assault weapons is certainly needed. I am, however, somewhat dismayed to see that the administration has decided not to participate in today's hearing. But that is their judgment; they know the rules here, or how the game is played, if you want to call it that.

I understand that this was noticed or announced on April 19 or 20 that we would have a hearing, at the markup last month. So, there has been ample time for the administration to prepare. Many have talked to President Bush, myself included. The administration is well informed on this issue.

I have talked to Mr. Bennett and I have talked to the Secretary of the Treasury, and he is waiting. They don't have a position. That

is really what it amounts to. They are waiting for a survey that they have sent out. They are going to talk about it, look at it, and come up with a proposal. In the meantime, I think we have to move ahead.

It would be unfortunate if the President remained on the sidelines until the dust is settled, only to come forward and complain of the situation, or that he couldn't be part of the whole process. So, I again urge the administration to be involved, and be involved now.

Mr. Chairman, you and I are faced with a similar situation. You represent a State which has major metropolitan areas and extensive rural areas. Members of these various communities hold different and often divergent opinions regarding the ownership of firearms.

The same can be said of Arizona communities. The constituents from my home State express a wide variety of opinions on the gun issue, in general, and, in particular, on the types of semiautomatic weapons, termed "assault weapons," covered in legislation being considered today.

I appreciate knowing the concerns of my constituents about gun legislation. Throughout my Senate career, I have demonstrated a strong record of protecting second amendment rights, and will continue to do so.

I have also supported efforts to discourage individuals from illegal use of guns with swift and appropriate punishment, including mandatory sentences for anyone using a firearm in the commission of a felony. I happen to agree with a majority of my colleagues, as well as President Bush, that we need to do something about assault weapons.

President Bush has acted by suspending importation of foreign-made models of semiautomatic assault-type weapons. Nearly 1 million guns are covered by the ban in effect right now.

The President is quoted in the March 8, 1989, New York Times as saying that his decision, "represents a heightened concern on my part about AK-47's." He has also said that the police,

\* \* \* have been very concerned about this issue and we have got to find an accommodation between the police and the sporting interest. In my view, there can be an accommodation and one must be found.

Those are the words of President Bush.

Now, Mr. Chairman, I am not the only politician in Arizona who has decided to speak out on this issue. Former Senator Barry Goldwater, who is seldom, if ever, accused of harboring a liberal thought, is quoted in the April 4, 1989, Washington Post as follows:

I am completely opposed to selling automatic rifles. I don't see any reason why they ever made semiautomatics. I have been a member of the NRA. I collect, make, and shoot guns. I have never used an automatic or semiautomatic for hunting. There is no need to. They have no place in anybody's arsenal. If any SOB can't hit a deer with one shot, then he ought to quit shooting.

[Laughter.]

Senator DECONCINI. Now, Mr. Chairman, I take a bit more conservative approach than Senator Goldwater. [Laughter.]

I suggest that there are legitimate reasons to own semiautomatic firearms. I also believe that it is acceptable to hunt deer, even if it takes two shots. The point I am making is that this issue is one

which requires everyone, even the National Rifle Association, to rethink his or her position, including this Senator.

It seems that every night on the television, radio, or the front page, the lead story tells of someone killed by an assault weapon. More often than not, there is some connection to the illegal drug trade in these tragic incidences. Whether it is the cartels from Colombia or the youth gangs like the Bloods or Crips, drug dealers have found a weapon of their choice that gives them the edge over the adversaries, including and usually the police. There comes a point in time when an individual must stop and say to himself or herself, let us take a look and see what can be done to stop the slaughter on our streets.

On April 11, 1989, I introduced Senate bill 747. This legislation would prohibit the transfer, importation, transport, shipping, receipt, or possession of specific assault weapons that are often used in drug-related crimes, unless lawfully possessed before the effective date of the bill.

It would also increase the penalties for using assault weapons during the commission of a violent drug-related crime. I believe my bill represents a reasonable position on this issue, or as President Bush said, an "accommodation between the police and the sporting interest."

With the great respect I have for my distinguished colleague from Ohio, Senator Metzenbaum, I find myself in opposition to his bill. I first want to compliment him for the amendments that he did offer, which I think were very constructive. It demonstrates that he wants to find a solution. He is not dogmatic, but I still have troubles with that legislation.

Although I agree that certain specific semiautomatic firearms should be limited, I do not support either establishing a 14-day waiting period for transfer of semiautomatic weapons or providing the Secretary of the Treasury with discretion to ban additional weapons. Because of these and other differences—differences I see as further infringement on second amendment rights—I must oppose Senate bill 386, as it is now amended.

Mr. Chairman, focusing on a related issue for a moment, I would like to discuss the National Rifle Association. The NRA has been a friend and supporter of this Senator for years. In fact, I was named Legislator of the Month in July of 1988, and the NRA strongly endorsed my recent reelection.

As their literature states about Senator DeConcini:

From the time he arrived in Washington over 12 years ago, Senator DeConcini and his staff have worked far above and beyond the call of duty for your firearms and hunting rights.

Unfortunately, the NRA has made some misleading and inaccurate statements about my bill, to which I feel obligated to respond and will put in the record a detailed explanation. In view of our close working relationship over the years, I am extremely disappointed by the NRA's misrepresentation of Senate bill 747, and the NRA's refusal on more than one occasion to provide help in the technical, complex area of semiautomatic assault weapons.

I believe my bill represents the least intrusive approach thus far on the issue, and the NRA has responded with exaggerated un-



truths, such as suggesting that my bill can ban almost all center-fire semiautomatic rifles, shotguns, and pistols that you can buy in Arizona.

By using these tactics, the NRA is succeeding only in alienating its friend closest to the fight. It is a difficult enough task to ensure that unreasonable proposals do not become the law of this land. The NRA's refusal to participate in a constructive manner makes the task even more arduous.

As we did in the last Congress when we overwhelmingly passed a bipartisan bill concerning undetectable firearms, it is my hope that Congress, the administration, and both law enforcement groups and gun owners will reach a consensus on legislation relating to assault weapons. I believe the bills before us can be that tool.

I want to thank you, Mr. Chairman, for your indulgence with my statement.

Senator SIMON. Thank you, Senator DeConcini.

We have written statements in support of a ban on assault weapons from the president of the Illinois Association of Chiefs of Police, the police commissioner of Philadelphia, the Illinois Education Association, the United States Catholic Conference, the American Jewish Committee, the National Association of Counties, and the American Bar Association, and those statements will be entered in the record.

[Information follows:]





DON R. DERNING  
Executive Director

## Illinois Association of Chiefs of Police

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### OFFICERS 1989

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Past President  
Orland Park

March 22, 1989

The President  
The White House  
Washington, D.C.

Dear Mr. President,

You are to be applauded for your decision to stop the import of military-style semi-automatic assault weapons.

It is my understanding that First Lady Barbara Bush and the country's newly installed Drug Czar William Bennett provided measurable support for your heightened concern about the mentality that says these assault weapons have some kind of useful purpose for the civilian population.

Now you must work to focus the attention of Congress on the passage of laws to ban the sale, possession, and manufacture of para-military assault rifles like the Chinese-made AK47. Both houses of the legislature in California have recently passed such laws and even their conservative Governor George Deukmejian has said he will sign such a law.

Additionally, Colt Industry's decision to suspend sales of such assault weapons is admirable. We would like to see other gun manufacturers in the United States take a similar lead.

For the safety and welfare of all of our citizens, there really is no choice but to try to eliminate these assault weapons while clearly separating this issue from all the other gun control debates rending this country.

You have the ability to influence legislation which could make access to these assault weapons more difficult. It seems a small price to pay and we sincerely believe that the true hunter/fisherman/rifleman will not suffer as a result of such a sane, limited, freedom-respecting method of limiting gun violence.

Sincerely,

*Chief Dobbs*  
Chief Carl Dobbs  
President

# SENATE COMMITTEE HEARING



## SEMI AUTOMATIC WEAPONS

Willie L. Williams  
Police Commissioner City of Philadelphia

Washington D.C.  
MAY 5, 1989

TESTIMONY BEFORE SENATOR PAUL SIMON'S COMMITTEE  
ON AUTOMATIC WEAPONS

THANK YOU FOR INVITING ME TO TESTIFY BEFORE THIS DISTINGUISHED COMMITTEE TO DISCUSS THE AVAILABILITY OF ASSAULT WEAPONS TO THE GENERAL PUBLIC.

AS THE POLICE COMMISSIONER OF THE CITY OF PHILADELPHIA AND AS A 24-YEAR VETERAN OF THE DEPARTMENT, I AM TOTALLY CONVINCED THAT THE READY AVAILABILITY OF SEMI-AUTOMATIC ASSAULT WEAPONS WILL CONTINUE THE SENSELESS VIOLENCE PERPETRATED ON INNOCENT CHILDREN AND LAW-ABIDING CITIZENS.

ONE NEED NOT LOOK FURTHER THAN THE CHILDREN MASSACRED IN A STOCKTON, CALIFORNIA SCHOOLYARD; OR THE STUDENTS RUTHLESSLY GUNNED DOWN FROM A HOUSTON, TEXAS TOWER; OR THE INNOCENT SHOPPERS SLAUGHTERED IN A SPRINGFIELD, PENNSYLVANIA SHOPPING MALL BY A MENTALLY DERANGED WOMAN FOR EVIDENCE OF THE DEATH AND CARNAGE THAT THESE WEAPONS OF WAR HAVE BEEN USED.

THE ASSAULT WEAPONS USED IN THESE MASSACRES SERVE NO LEGITIMATE SPORTING PURPOSE, NOR ANY OTHER PURPOSE, SAVE TO KILL AND Maim. THE IMMENSE FIRE POWER, OF WHICH THEY ARE CAPABLE, IS PARTICULARLY FRIGHTENING, ESPECIALLY IN AN URBAN SETTING, LIKE PHILADELPHIA, WITH ITS DENSE POPULATION. AN ADDITIONAL TERRIFYING ASPECT OF THESE FIREARMS IS THEIR CAPABILITY OF BEING MODIFIED TO OPERATE SEMI-AUTOMATIC.

A WEAPON FIRED IN THIS MANNER IS CAPABLE OF INFLECTING HORRENDOUS AND INDISCRIMINATE DESTRUCTION OF LIFE. WHEN THEY ARE FIRED IN AN AUTOMATIC MODE, THEY ARE EXTREMELY DIFFICULT TO CONTROL. THIS IS ESPECIALLY TRUE IN THE HANDS OF UNTRAINED USERS. ONE CAN EASILY IMAGINE THE MAYHEM THAT WOULD RESULT BY THE SPRAYING EFFECT THESE WEAPONS WOULD HAVE IN A RESIDENTIAL NEIGHBORHOOD.

RECENTLY, THE PHILADELPHIA POLICE DEPARTMENT HAS SEEN THE PROLIFERATION OF THESE ASSAULT WEAPONS IN THE HANDS OF "CRACK" AND HEROIN DEALERS. THESE WEAPONS POSE THE SINGLEMOST, DANGEROUS THREAT TO THE SAFETY OF OUR OFFICERS WHO ARE CHARGED WITH THE RESPONSIBILITY OF PROTECTING OUR CITIZENS. WHEN THE DRUG DEALERS ARE MORE HEAVILY ARMED THAN THE LAW ENFORCEMENT AGENCIES CHARGED WITH THEIR APPREHENSION, IT IS TIME TO TAKE ACTION TO RECTIFY THIS ABUSIVE SITUATION.

DURING 1988, OVER 52% OF THE HOMICIDES COMMITTED IN PHILADELPHIA WERE INFLECTED BY FIREARMS. THIS IS AN INCREASE OF NEARLY 10% OVER THE LAST THREE YEARS. IN THE SAME TIME PERIOD, AGGRAVATED ASSAULTS HAVE RISEN 5% WHERE FIREARMS WERE INVOLVED. THE COMMISSION OF MANY OF THESE CRIMES INVOLVED THE USE OF SEMI-AUTOMATIC WEAPONS. BETWEEN 1984 AND 1988 THE CONFISCATION OF SEMI-AUTOMATIC WEAPONS BY THE PHILADELPHIA POLICE DEPARTMENT INCREASED BY 34.4%.

A LARGE PERCENTAGE OF THESE VIOLENT CRIMES ARE DIRECTLY ATTRIBUTABLE TO ILLICIT DRUG DEALERS WHOSE INDISCRIMINATE USE OF THESE WEAPONS IS WELL DOCUMENTED.

THIS TREND OF VIOLENCE MUST NOT BE ALLOWED TO CONTINUE. IN ORDER TO ACCOMPLISH THIS END, THE PHILADELPHIA POLICE DEPARTMENT STANDS FIRMLY AGAINST MAKING SEMI-AUTOMATIC ASSAULT WEAPONS AVAILABLE TO THE PUBLIC.

THE IMPOSITION OF RESTRICTIONS AND CONTROLS ON THE SALES OF ASSAULT WEAPONS MUST BE ACHIEVED IN ORDER TO CURTAIL THEIR PROLIFERATION AND THE RESULTING MAYHEM THAT IS THEIR LEGACY.

THE FIRST STEP IN LIMITING THE AVAILABILITY OF THESE WEAPONS HAS BEEN TAKEN BY DRUG CZAR WILLIAM BENNETT. HIS BAN ON THE SALE OF SEMI-AUTOMATIC ASSAULT WEAPONS IS A DEFINITE BEGINNING IN LAW ENFORCEMENT EFFORTS TO CONTROL THE VIOLENCE ASSOCIATED WITH THESE WEAPONS.

JUST HOW AVAILABLE ARE ASSAULT WEAPONS TO THE CITIZENS OF PENNSYLVANIA? WELL, THE ONLY REQUIREMENT NEEDED TO OWN AN ASSAULT WEAPON IS THE CASH NECESSARY TO PURCHASE ONE.

BEFORE THE COMMONWEALTH OF PENNSYLVANIA ISSUES A DRIVER'S LICENSE TO ONE OF ITS CITIZENS, THAT PERSON FIRST MUST HAVE A LEARNER'S PERMIT, EYE EXAM, AND A PHYSICIAN'S STATEMENT ATTESTING TO THE GOOD HEALTH OF THE PROSPECTIVE DRIVER WHO MUST ALSO PASS A RIGID DRIVER'S TEST BEFORE BEING LICENSED TO OPERATE A MOTOR VEHICLE.

BY COMPARISON, IT SEEMS ABSURD THAT TO PURCHASE AN ASSAULT WEAPON, NOT ONE CREDENTIAL ATTESTING TO THE PHYSICAL AND MENTAL

OR THE MIND OF THE BUYER IS REQUIRED. INDI



PROHIBITED WITH THE CONFESSION OF SUCH A DEVASTATING WEAPON IS  
REQUIRED.

TRAGICALLY, IT IS EASIER TO ACQUIRE AN ASSAULT WEAPON IN  
PENNSYLVANIA THAN IT IS TO ACQUIRE A DRIVER'S LICENSE.

MAY BE THE RESULT AS A RESULT OF THE VIOLENCE GENERATED BY  
THE USE OF THESE WEAPONS, HAVE PASSED ORDINANCES BARRING THE SALE  
AND POSSESSION OF SEMI-AUTOMATIC, MILITARY ASSAULT-TYPE RIFLES.  
NEARLY TWO DOZEN CITIES THROUGHOUT THE COUNTRY ARE CONSIDERING  
SIMILAR BANS.

THOSE WHO OBJECT TO THESE BANS MUST KEEP IN MIND THAT THESE  
MEASURES ARE NOT INTENDED TO AFFECT ALL FIREARMS OR SPORTING  
WEAPONS. THEY ARE CLEARLY ADDRESSING THE ISSUE OF WEAPONS OF  
WAR. THAT IS THE PURPOSE OF THESE ASSAULT WEAPONS.

AT THE VERY LEAST, A MANDATORY WAITING PERIOD SHOULD BE IMPOSED  
BETWEEN THE TIME OF PURCHASE AND THE ACTUAL ACQUISITION OF THE  
FIREARM BY THE PURCHASER. THIS PERIOD SHOULD BE OF SUFFICIENT  
TIME TO ALLOW BOTH A CRIMINAL AND PSYCHOLOGICAL BACKGROUND CHECK  
OF THE INDIVIDUAL DESIRING TO PURCHASE THE WEAPON. SIMILAR  
PROCEDURES ARE REQUIRED IN MANY STATES FOR THE PURCHASE OF  
HANDGUNS. THIS PRACTICE SHOULD BE EXTENDED TO THE PURCHASE OF  
ASSAULT RIFLES.

SHOULD LEGISLATION BE PASSED BANNING ASSAULT-TYPE WEAPONS,

MANDATORY WAITING PERIOD SHOULD ALSO BE IMPOSED ON INDIVIDUALS FOUND

IN POSSESSION OF THESE TYPES OF FIREARMS. THIS WOULD ACT AS A FURTHER DETERRENT TO THE PROBLEM. THESE SENTENCES MUST BE IMPOSED UNIFORMLY AND WITHOUT INTERVENTION OF PLEA BARGAINING OR OTHER OUTSIDE INTERFERENCE IN ORDER TO ENSURE THEIR EFFECTIVENESS.

THE SECOND, AND MORE IMPORTANT, STEP IS TO ENACT A TOTAL BAN ON THE POSSESSION OF ASSAULT WEAPONS BY MEMBERS OF THE GENERAL PUBLIC.

HOWEVER, UNTIL SUCH A BAN IS EFFECTED, THERE MUST BE A MANDATORY WAITING PERIOD TO ALLOW LAW ENFORCEMENT AGENCIES SUFFICIENT TIME TO INVESTIGATE AN INDIVIDUAL'S FITNESS TO POSSESS ANY TYPE OF FIREARM.

LARGE CITIES MUST BE GIVEN THE POWER TO ENACT ORDINANCES LIMITING THIS RIGHT TO BEAR ARMS DUE TO THE DENSITY OF POPULATION AND THE INHERENT PROBLEMS ASSOCIATED WITH LARGE CITIES.

AND FINALLY, IN ADDITION TO MANDATORY CRIMINAL BACKGROUND CHECKS, WE MUST NOW INCLUDE A MECHANISM THROUGH WHICH WE CAN DETERMINE AN INDIVIDUAL'S PSYCHOLOGICAL FITNESS TO PURCHASE OR POSSESS A FIREARM. WE MUST NOT ONLY ENSURE THAT THESE INSTRUMENTS OF DEADLY FORCE DO NOT FIND THEIR WAY INTO THE HANDS OF THE CRIMINAL ELEMENT, BUT ALSO STAY OUT OF THE HANDS OF THOSE UNFORTUNATE INDIVIDUALS PLAGUED WITH MENTAL DISORDERS.

IT IS NOT MY INTENTION, NOR IS IT MY PURPOSE, TO DILUTE THE CONSTITUTIONALLY PROTECTED RIGHT OF A CITIZEN TO BEAR ARMS.

HOWEVER, WE MUST TAKE CARE TO ENSURE THAT THE RIGHT OF THE  
PUBLIC IS NOT SUBSERVIENT TO THIS SECOND AMENDMENT RIGHT.

IT IS MY BELIEF THAT THESE PATRIOTS WHO FORMED OUR  
CONSTITUTION INTENDED THAT THIS RIGHT TO BEAR ARMS BE DONE IN A  
REASONABLE AND PRUDENT MANNER. THE POSSESSION OF ASSAULT WEAPONS  
BY THE GENERAL PUBLIC IS NEITHER REASONABLE NOR PRUDENT SINCE THE  
SAFETY AND GENERAL WELFARE OF THE PUBLIC IS AT THE MERCY OF THOSE  
WHO WIELD THESE WEAPONS.

THANK YOU!

PHILADELPHIA POLICE DEPARTMENT  
SEMI-AUTOMATIC WEAPON CONFISCATIONS 1984-1988

|                   | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>1987</u> | <u>1988</u> |
|-------------------|-------------|-------------|-------------|-------------|-------------|
| SEMI-AUTO PISTOL  | 871         | 916         | 883         | 991         | 1207        |
| SEMI-AUTO RIFLE   | 162         | 153         | 154         | 158         | 181         |
| SEMI-AUTO SHOTGUN | <u>31</u>   | <u>38</u>   | <u>35</u>   | <u>47</u>   | <u>42</u>   |
| TOTAL:            | 1064        | 1107        | 1072        | 1196        | 1430        |
| PERCENT CHANGE    |             | + 4.0%      | - 3.2%      | +11.6%      | +19.6%      |

**IEA-NEA**

Illinois Education Association-NEA

100 East Edwards Street

Springfield, Illinois 62704

217/544-0706

April 4, 1989

The Honorable Paul Simon  
U. S. Senator  
462 Dirksen Building  
Washington, DC 20515

Dear Senator Simon:

The National Education Association's Board of Directors supports a ban on so-called assault weapons, such as the AK-47.

The Assault Weapon Control Act, S. 386, introduced by Senator Metzenbaum (D-Ohio) would ban the importation, transportation, and possession of a specified group of new assault weapons. NEA has endorsed this bill.

Please vote for S. 386 during markup by the Constitution Subcommittee and on the floor of the Senate.

Sincerely,

Kenneth Bruce  
Director of Public Affairs

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# UNITED STATES CATHOLIC CONFERENCE

Department of Social Development and World Peace  
1312 MASSACHUSETTS AVENUE N.W., WASHINGTON, D.C. 20005 (202) 659-6797

Office of Domestic Social Development

May 1, 1989

The Honorable Howard Metzenbaum  
United States Senate  
Washington, D.C. 20510

Dear Senator Metzenbaum:

On behalf of the United States Catholic Conference, the public policy agency of the nation's Roman Catholic bishops, I write to support S 386, the Assault Weapons Control Act of 1989. This bill will ban the possession of assault weapons by persons other than police and military personnel.

The Catholic Conference Committee on Social Development and World Peace has noted that "in most of our cities and rural areas, purchasing a weapon is as easy as buying a camera. . . . The growing reality and extent of violent crime is of great concern to the Committee on Social Development and World Peace and to all Americans. It threatens more and more of our citizens and communities. The cost of this violence in terms of human life and suffering is enormous." The Catholic Church is deeply committed to upholding the value of human life and opposing those forces which threaten it.

I recognize that the Assault Weapons Control Act of 1989 will not eliminate gun violence, but I believe it is an important contribution to the serious attempts to deal with the problem.

Sincerely,

John L. Carr, Secretary  
Department of Social Development  
and World Peace





The American Jewish  
Committee

OFFICE OF THE WASHINGTON REPRESENTATIVE, 2507 Massachusetts Avenue, N.W. Washington, D.C. 20037-1000

STATEMENT IN SUPPORT OF S. 386  
BY THE AMERICAN JEWISH COMMITTEE,  
THE AMERICAN JEWISH CONGRESS,  
B'NAI B'RITH INTERNATIONAL, &  
THE NATIONAL EDUCATION ASSOCIATION

The American Jewish Committee, the American Jewish Congress, B'nai B'rith International, and the National Education Association strongly support S. 386, The Assault Weapon Control Act of 1989, which was introduced by Senator Howard Metzenbaum on February 8, 1989 in order to stem the nongovernmental sale, importation, and possession of assault weapons. The high and growing incidence of gun-related deaths in the law enforcement and the general community are among the factors that have led us to support responsible gun control measures such as S. 386.

In addition to these factors, the groups listed above are troubled by one tragic result of this country's failure to regulate assault weapons: the extent to which neo-Nazi, and White Supremacist hate groups such as the Ku Klux Klan and the Order are able to build private arsenals of advanced weapons which have been used in crimes of violence against minority groups.

Since 1987 the number of "Hate Crimes" motivated by prejudice, and based on race, religion, ethnic or sexual orientation, has been noted by the Bureau of Alcohol, Tobacco, and Firearms (ATF), the FBI, and various private organizations. This increase in the number of crimes, despite the best efforts of our law enforcement community, highlights the pressing need to strengthen the laws which regulate the sale and transfer of semiautomatic weapons. S. 386 provides a comprehensive step in that direction. Senator Metzenbaum's bill bans the sale and importation of 25 assault

weapons, provides an optional background check for the transfer of assault weapons, and proscribes mandatory penalties for the use of an assault weapon in the commission of a crime.

Recent events only emphasize the need for assault weapon control legislation. In late April of this year, a raid on a District of Columbia boarding house where a group of neo-Nazis lived produced an impressive array of semi- and fully automatic weapons and a grenade launcher which the group planned to sell to Paraguay. In 1985, ATF officials raided a camp run by the Order, another neo-Nazi group, and found an arsenal of deadly weapons, explosives, an anti-tank rocket launcher, and a shop where automatic weapons were produced. In an incident reported in 1986, police raided the van of an Order member and found six machine guns, seven silencers, and a number of identification documents made out in various names. In 1987, a gun shop employee and neo-Nazi leader was apprehended with an arsenal of weapons including many loaded handguns, homemade bombs, and machine guns -- one of which was used to threaten a group of children outside a pizza parlor. In 1988, a United Klans of America (UKA) officer was charged with 43 counts of possessing illegal firearms after ATF agents seized a large cache of arms, including five machine guns.

Despite the arguments advanced by the National Rifle Association and others, we do not believe that S. 386 imposes a significant burden on the law-abiding individual's right to own firearms. Moreover, any slight inconvenience to sportsmen must be weighed against the larger public interest served by more stringent controls on the transfer of semiautomatic weapons.

Senator Metzenbaum has developed a measure that respects the interests of both sportsmen and law enforcement. While we commend Senator DeConcini for his leadership in introducing S.747, his bill is overly limited in scope. An excessively narrow list of weapons are covered; and neither the sale of large, detachable magazines, nor a background check for new owners of assault weapons, are included in the bill.

Assault weapons must be kept out of the hands of extremists and bigots. We urge you to endorse Senator Metzenbaum's initiative, and to support it vigorously on the Senate floor.

**NATIONAL  
ASSOCIATION  
of  
COUNTIES**

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440 First St. NW, Washington, DC 20001  
202/393-6226

April 3, 1989

The Honorable Paul Simon  
Chairman  
Senate Subcommittee on the Constitution  
SD-524 Dirksen Senate Office Building  
Washington, DC 20510

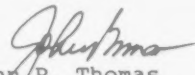
Dear Chairman Simon:

On March 5, at our Legislative Conference, NACo's Board of Directors unanimously approved a policy position opposing the distribution or sale of assault weapons to the general public. The Board acted on the unanimous recommendation of NACo's Justice and Public Safety Committee chaired by Supervisor Carole Carpenter of Maricopa County, Arizona.

This position is the same as a policy which had been approved earlier by the leadership of the International Association of Chiefs of Police.

I am enclosing with this letter a copy of NACo's policy for your consideration.

Sincerely,

  
John P. Thomas  
Executive Director

Enclosure

JUSTICE AND PUBLIC SAFETY STEERING COMMITTEE  
ASSAULT WEAPONS  
INTERIM PLATFORM LANGUAGE

The National Association of Counties is opposed to the distribution and/or sale of assault weapons to the general public. The National Association of Counties defines assault weapon as a firearm of such a nature and with such a high rate of fire and capacity for firepower that its function as a legitimate sports and recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. Weapons such as the AR-15, MAC-10, Uzi, MAC-11, M-16 and AK-47 fall into this category.

Adopted by the Justice and Public Safety Steering Committee  
(unanimous)  
March 4, 1989

Adopted by the NACo Board of Directors  
(unanimous)  
March 5, 1989

**AMERICAN BAR ASSOCIATION**

Division For Communications and Public Affairs

750 North Lake Shore Drive, Chicago, Illinois 60611, (312) 988-5000



Contact: Christine Lanier  
Phone: (202) 331-2293 OR  
Gail Alexander  
(303) 296-2550

OPENING REMARKS

PRESS CONFERENCE

FRIDAY, FEBRUARY 3, 1989

ROBERT D. RAVEN

PRESIDENT

AMERICAN BAR ASSOCIATION

Today I would like to focus my opening remarks on two issues of critical importance to our nation.

The first issue is the alarming growth in gun-related violence. The use of a Chinese version of the Soviet AK-47 assault rifle in the slaying of five school children and wounding of 30 others in Stockton, California has focused national attention on the dangerous escalation in the sale and use of military assault weapons. This problem demands our immediate attention. Law enforcement officials have sounded the alarm that this high tech, remarkably destructive weaponry is increasingly finding its way into the hands of drug traffickers, especially in large metropolitan areas. A recent Time magazine



article reports that purchases of the Chinese AK-47 imitation soared from 4000 in 1985-1986, to 40,000 last-year. The Stockton incident and others show that this proliferation and use of military assault weapons is not confined to the drug trade.

A glaring loophole in federal gun control laws has created easy public availability of assault weapons. Under current law, automatic weapons such as the AK-47, the Israeli-made Uzi machinegun, and the U.S. made AR-15, can be sold if they are modified to be semi-automatic. These weapons remain highly destructive as modified, but even more disturbing, they can easily be converted back into their fully automatic form.

The time for the nation to act is now." Yesterday I sent a letter to the Attorney General urging him to institute a federal waiting period as part of his charge to develop and implement a system that prevents felons from buying these and other guns. I am also asking the ABA's Criminal Justice Section to examine the issue of appropriate legislation to ban civilian access to military assault weapons.

This problem is not going to go away on its own. After the Stockton incident, people flocked to gun shops to buy AK-47 look-alikes or other semi-automatic military weapons. Just last week, a gunman opened fire on 200 students at a Washington, D.C. school, wounding four. Our nation must take immediate action to put an end to such gun-related violence.

**AMERICAN BAR ASSOCIATION**

Division For Communications and Public Affairs  
750 North Lake Shore Drive, Chicago, Illinois 60611, (312) 988-5000



Robert D. Raven, President, American Bar Association  
Reaction Statement to the Administration's Action on Assault  
Weapons.  
March 15, 1989

We were extremely pleased by the action taken yesterday by the Bush Administration suspending importation of over 110,000 assault weapons. The rapid increase in availability of these weapons poses a grave danger to law enforcement and civil order, as evidenced by the Stockton, California, incident and the many drug-related crimes committed with these weapons. While we applaud this first step, it is not enough. More than 60% of these weapons are made in this country and they are no less dangerous than those we import. Action is needed to close loopholes in federal gun control laws that make these military weapons available to civilians.

Senator SIMON. Because there has been some confusion here about what has happened, let me just indicate the chronology of what did take place and then we will hear from the witnesses.

At the markup on April 19, Senator Specter requested a hearing. I immediately agreed, as long as it did not delay moving on the bill. That same day, Senator Specter sent me a letter asking for a hearing before the next executive meeting of the Judiciary Committee, then scheduled for May 4.

The next morning, I met with my staff and we agreed that it could not be held before May 4; that May 5, today, was the first day it could be held, and that we would ask for a postponement of the bill in the full committee.

Senator Specter's staff was notified that same day and asked to supply witnesses. We notified, the same day, the BATF, assuming that they would speak for the administration. The following week, Senator Specter asked that the Department of Justice, rather than BATF, be asked to testify, and we asked Chairman Biden to invite the Department of Justice.

On May 1, Senator Specter wrote a letter to me requesting that the hearing be delayed. I, frankly, made a decision not to delay the hearing.

We are pleased to have the panel here, and let me call first on Mr. Dewey Stokes, the president of the Fraternal Order of Police. Mr. Stokes.

**PANEL CONSISTING OF DEWEY STOKES, NATIONAL PRESIDENT, FRATERNAL ORDER OF POLICE; JOHN F. DUFFY, SHERIFF, SAN DIEGO COUNTY, CA, ON BEHALF OF THE NATIONAL SHERIFFS' ASSOCIATION; WILLIAM NOLAN, CHIEF OF POLICE, HOMEWOOD, IL; AND CLARENCE DUPNIK, SHERIFF, PIMA COUNTY, AZ**

#### **OPENING STATEMENT OF DEWEY STOKES**

Mr. STOKES. Mr. Chairman, members of the subcommittee——

Senator SIMON. And let me just add to the witnesses, we will operate on a 5-minute rule. We will enter your full statements in the record. For the members of the committee, we will have a 10-minute rule for questioning.

Mr. Stokes.

Mr. STOKES. OK, and I will deviate from my written testimony.

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to appear today before you and share my thoughts on the pending legislation related to the importation and sale of military-style assault weapons.

My name is Dewey Stokes, Mr. Chairman, and I am national president of the Grand Lodge, Fraternal Order of Police, and a patrolman in the city of Columbus with 21 years' experience.

The Fraternal Order of Police is the largest member organization of police professionals in the world with over 198,000 members in the United States and 1,719 lodges in 45 States, comprised of local, State, and Federal law enforcement officers.

Stated more simply, though perhaps not as eloquently, the Fraternal Order of Police represents the cop on the beat. The men and women that I testify on behalf of are usually the first law enforce-

ment personnel at the scene of crimes and, as a result, are the cops with the greatest exposure to life-threatening forces on a daily basis.

While I am aware that the subject of today's hearing is not new to this distinguished panel, I would like to briefly share my perspectives and that of the FOP on this issue.

Each hour, 4 Americans die in shootings, 33,000 from guns, 18,000 reportedly from suicide. In the District of Columbia last year, which had the highest death rate in the United States, 1,200 citizens and police officers were wounded.

Guns are the eighth leading cause of death in the United States, and guns are used in 60 percent of all homicides. Two hundred million guns are estimated to be in the United States currently, with 5 million new ones sold each year. Most of those remain in the United States while others are exported to other countries, as BATF has testified.

This Nation experienced street demonstrations and protests to get out of the war in Vietnam. Those demonstrations cost American lives abroad and here at home. But no demonstrations have been called for, or a sensible, common cause approach for gun legislation as has been put before this subcommittee.

Yet, in the last 2 years, we have lost more Americans, citizens, and police officers to gun violence than the 16 years of the Vietnam War. It is time to bring the domestic arms race to some reasonable control with legislation in this area.

Then there is the \$1 billion-plus for medical attention provided those who suffer gunshot wounds, of which 1.5 percent was a direct pay by those who received those services. The other 98.5 percent was paid for by insurance claims or State and county welfare systems. And you ask why are medical costs going up.

If it were not for the trauma units, the life flights, the great doctors and nurses working our ER's, the death rate of our police officers would be greater than reported today. In many cases, many police officers are alive today because of their professional services to our officers who are killed or wounded in the line of duty.

But those officers, because of the great service that they receive in the ER's and the hospitals of America, are confined to a wheelchair for the rest of their lives.

Those convicted of shooting and killing our police officers in some States average a lifetime sentence today of 7 years of confinement and then release to some community program, or, in some cases, a total pardon—a total pardon was recently granted by Governor Cuomo of New York State for a cop killer—a pardon.

Yes, the domestic arms race must stop. Legislation to control military-style assault weapons could be the beginning of a war on crime. We would not, as elected leaders, be properly representing our membership and the citizens if we do not speak out in support of this type of legislation.

We would prefer stronger controls than contained in Senate bill 386. We, together—the Congress of the United States, the police officers of this country—can and want to come here to you this year and make a difference.

I don't want to come back next year and testify that, yes, because of the lack of action of the Congress of the United States, we have

lost more police officers and have had more confined to a wheelchair.

These weapons laying in front of you will penetrate the vests of police officers with the ammunition that is provided. These assault weapons are the weapons of crime and of choice by drug dealers and the criminal element. Let us work together; help us prevent crime and save lives.

The cop on the beat is heavily outgunned because of these weapons.

Senator SIMON. Our 5 minutes is up. If you could summarize in a minute or two?

Mr. STOKES. Thank you, Senator.

There are 2 to 3 million of these weapons on the street, and I believe the inescapable conclusion is that we do need Federal legislation to help bring it under control.

The FOP would support Senate bill 386, as amended, with some additional language which we have proposed in our written testimony. And I commend Senator DeConcini for his support in both trying to move this legislation from the subcommittee to the full committee.

But we urge your consideration of those outlined programs that we have suggested in our written testimony to make this legislation a little stronger. We have specified 45 weapons that should be barred from importation into the country and domestic manufacture as well.

I want to thank you, Senator, for giving us the opportunity. I commend your attention to our submitted legislation and I hope that you will give it some consideration as deliberations on this issue continue.

Thank you.

Senator SIMON. We thank you, Mr. Stokes.

[The prepared statement of Mr. Stokes follows:]



TESTIMONY OF DEWEY STOKES  
NATIONAL PRESIDENT  
FRATERNAL ORDER OF POLICE

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to appear before you today and to share my thoughts on the pending legislation related to the importation and sale of military-style assault weapons.

My name is Dewey Stokes, Mr. Chairman, and I am the National President of the Grand Lodge of the Fraternal Order of Police. The Fraternal Order of Police is the largest member organization of police professionals in the world with over 198,000 members in the United States. The FOP has 1,719 lodges in 45 states and is comprised of local, state, and federal law enforcement officers.

Stated more simply, though perhaps less elegantly, the FOP represents the cop on the beat. The men and women I am testifying on behalf of are usually the first law enforcement personnel at the scene of a crime and, as a result, the cops with the greatest exposure to life-threatening force on a daily basis.

While I am aware that the subject of today's hearing is not a new one to this distinguished panel, I would like to briefly share with you my perspective, and that of the FOP, on this issue.

Virtually any television news broadcast or newspaper in a major urban media market carries daily a story of carnage and assault usually in conjunction with the illegal use of a firearm. I need not elaborate here on some of these unfortunate incidents, you have seen them yourselves. There is no doubt that in many communities, especially here in the District of Columbia, a virtual tidal wave of crime threatens the very safety of law-abiding citizens. Facing this flood of criminal activity and standing between it and society is the thin blue line of the law enforcement community.

Increasingly, this battle finds the cop on the beat heavily out-gunned. The superior fire power now possessed by the criminal element in many of this nation's cities has already taken an enormous toll on those I represent. It is estimated today that Americans already own some 2 million to 3 million assault weapons, and that is just a guess probably not taking into account various underground weapons networks.

The FOP is not saying today that all of these weapons are being used illegally. We are saying, however, that enough of these types of weapons are readily available at affordable prices to pose a grave and immediate threat to the lives of those sworn to uphold our laws.

I doubt very much that any of you on this subcommittee or the witnesses testifying this morning would dispute that:

1. Assault weapons dramatically escalate the firepower of the user (some technical reports document fire rates of these weapons at 300, 500 or even 850 rounds per minute).
2. Larger numbers of these weapons are in private hands than every before and that number is increasing.
3. Assault weapons are used increasingly by and are becoming the weapon of choice of criminals.
4. Most assault weapons are relatively easy for any expert to convert to fully firing automatic, thereby increasing their destructive power and likelihood of death. In fact, many assault weapons can be converted to automatic by non-experts as well in a matter of minutes.
5. Existing state laws have failed to control the proliferation of these weapons.

Given the above statement of facts, I believe that the inescapable conclusion is that a federal legislative remedy is called for. That said, the FOP does not believe that crafting such a legislative solution will be easy. However, the American

tradition of gun ownership for legitimate purposes need not be threatened by legislation which targets specific weapon types having no use other than that criminal in nature.

In this regard, the FOP commends the action of you, Mr. Chairman, and the members of this subcommittee in forwarding S.386 and S.747 to the full Judiciary Committee for further action. Both bills, while not addressing all of our concerns, represent the best hope for those of us in the law enforcement community that some type of initiative on this issue is being taken. The revised version of S.386, to be offered by Senator Metzenbaum, is legislation extremely responsive to the multifaceted problem being addressed today. By expanding the list of prohibited weapons, banning the sale or possession of new large-capacity ammunition belts and magazines, and the creation of a 14-day waiting period for background checks prior to the sale of such weapons, Senator Metzenbaum has clearly moved in the right direction.

S.386, as revised, does not, however, go far enough in terms of prohibiting types of weapons which have no apparent legitimate use. We invite your consideration of our legislative proposal which lists 45 specific weapon types we believe should be made illegal. Furthermore, we believe legislation adopted by Congress in this area should include provisions dealing with the release of certain tax information pursuant to related criminal investigations and the establishment of a registration system for so-called "assault" weapons. These additions would begin to provide the law enforcement community the tools we need to make arrests, and to make those arrests stick.

The modifications we are seeking enjoy support within the Administration as well. National drug policy director William J. Bennett has suggested publicly that assault weapons should be subjected to a system of national registration similar to the one that has long covered ownership of machine guns since 1934. That there is a connection between the proliferation of these weapons

and increased criminal activity has been testified to by Stephen E. Higgins, the director of the Bureau of Alcohol, Tobacco and Firearms. A recent ATF study indicated that the number of assault weapons traced to criminal activity increased by 57% between 1986 and 1988. The law enforcement community applauds the initiative shown by Mr. Bennett and Mr. Higgins in speaking out on this issue within the Administration.

Mr. Chairman, what is really needed to solve the overall problem caused by the proliferation of these dangerous weapons is a lowering of our voices and an increase in our collective efforts to write workable, common sense legislation. Neither the cop on the street or the American public are comfortable with the concept of throwing up our hands and complaining that the task at hand is too difficult.

And no, Mr. Chairman, the emotionalism surrounding this issue should not serve as an opportunity by some gun control enthusiasts to infringe upon the legitimate right enjoyed by millions of law abiding Americans to own a firearm for personal, legal use.

Finally, let me just say this in closing: The FOP does not believe that even the passage of our legislative proposal as drafted would solve the problem completely -- it is going to take a lot of effort, commitment of resources and, yes, lives, to accomplish that. But, by passing legislation which helps eradicate these weapons at the source, you can begin to give those of us who face these weapons daily a helping hand. We are engaged in a war, Mr. Chairman, a war which we mean to win. All that the cop on the street is asking for is some assistance to help us do our job more safely.

Thank you. I appreciate the opportunity to have testified today and I will be happy to answer any questions you may have.

Senator SIMON. Sheriff John Duffy, of San Diego County, CA.

STATEMENT OF JOHN F. DUFFY

Mr. DUFFY. Thank you, Mr. Chairman. My name is John F. Duffy and I am the sheriff of San Diego County, CA. I am also here today as the chairman of the Law and Legislative Committee of the National Sheriffs' Association, which is based here in the Washington area, and as a member of the executive committee of that nationwide organization that represents all of the sheriffs, some 3,000, in the United States.

I have had 36 years of experience in my own department, although I have been professionally involved in nationwide organizations for a number of years in my profession. I want you to know that the National Sheriffs' Association supports Senate bill 386 and other legislation like that, which obviously includes Senate bill 747.

We, like Dewey Stokes, would like to see some better controls than currently exist in the proposed amendments by Senator Metzbaum. While we believe that Senate bill 747 is a good start, we would hope that it would go a little further than that.

Our major concern at the time that we were one of the first organizations to come on board and support this legislation was that we wanted to see .22 rim-fire semiautomatic weapons exempted from that, and that has occurred.

I would like to talk a little bit about San Diego, if I can, because it may be viewed as a sleepy little pueblo down by the border somewhere near Mexico, and it used to be. It has changed dramatically, like many areas of the United States.

San Diego would not be talked about the way I am going to speak about it by our civic leaders and by our Chamber of Commerce. San Diego County has been designated as the meth capital of the United States because we seize 50 percent of all of the meth labs seized in the State of California and 25 percent of all of those seized in the entire United States.

Some 322 meth labs were seized in the past 2 years in San Diego County. Guns were seized in every single one of those seizures. Approximately 50 percent of the weapons in those seizures were the kinds of weapons on this table in front of you.

There is a National Institute of Justice program called DUF, not named after me, Senator, but it is Drug Use Forecasting. Street felons booked in jail in our major cities are tested for recent drug use. San Diego has the dubious distinction of rating only behind New York City in those who test positive for all drugs, tied for No. 2 with Washington, DC, for testing positive in heroin, No. 1 for meth, and No. 1 in the entire United States for two or more drugs.

Drugs and weapons go together. The Drug Enforcement Administration routinely seizes weapons throughout the United States, and their job is, of course, to enforce drug laws, not weapons laws. Weapons amounting to 5,304 were seized by DEA in fiscal year 1988; 17 percent, or 884, were seized in the San Diego division.

Every day, we seize much beyond what DEA does, and 3 days ago, as an example, our deputies arrested two people on a drug warrant and seized 28 weapons, 2 of which were the kind represented on the table here. It is a daily occurrence.



I have watched the change over the 36 years that I have been involved with the San Diego County Sheriff's Department and professionally across this country. Cocaine and meth have increased the sophistication and the numbers are overwhelming the police. Gangs control neighborhoods and drug trafficking in San Diego County, as well as Washington, DC, and across the country.

I would like to take a couple of minutes to talk about and show you three recent experiences in San Diego County which I think clearly illustrate the case. First of all, about a month ago, shots were fired in a residential neighborhood. Deputies responded and were confronted by a man armed with an AK-47. A standoff occurred at gun point and was fortunately resolved without injuries by the sergeant grabbing the weapon at an opportune time.

The second one was a similar situation, but more tragic when a deputy sheriff died. The story is in my written testimony, a lot of it, including the eulogy I was required to write for that and deliver at the services for that officer. He died at the hands of a person with an AK-47—one dead deputy, two wounded, as a result of that SWAT shootout.

The last one covers these exhibits here which I would like to show you. I hope you can see them from there, but this is—let me give a quick description of the incident. A deputy sheriff who had just finished taking a burglary report spotted a red Porsche convertible occupied by a person wanted on a felony, no-bail weapons warrant. He was also a meth lab operator.

In the officer attempting to stop him, a pursuit followed. The suspect got around a corner in a residential neighborhood with children playing in the front yard, stopped in the middle of the street in the open convertible, picked up his MAC-10 and leaned over the back and waited for the officer to come around the corner, and when he did, he opened fire.

Between 75 and 90 rounds were fired at that patrol car, and as you can see the pictures, the car was killed. The deputy was very nearly killed. He sought cover behind the doors on two different occasions, tried to return fire, ineffective with a handgun.

This blood on the ground is that deputy's blood, where he sought cover behind this patrol car, with two rounds left. He had been hit in the vest twice, which saved his life; also hit here, with shoulder wounded, bleeding profusely. Two rounds left, and he cowered behind the car, afraid the fellow was coming after him with the MAC-10. Fortunately, other deputies arrived within a minute. He was rescued. The fellow escaped.

This clearly illustrates the bullet holes that hit his shirt above his nameplate. This is the vest that saved his life. Many of these rifles, the AK-47, for example, would have killed him. This happened to be one the vest could stop. It happened to be a MAC-10.

This is the MAC-10; this is the .30-caliber semiautomatic weapon that that same fellow used against another deputy 2 days later. Now, the way this happened was that the two on-duty patrol deputies were visiting the wounded officer in the hospital 2 days later when they received a telephone call of a possible license number for this wanted suspect who had wounded the other deputy.

The deputy left the hospital and returned to his beat. Less than 5 minutes later he observed that car in the rear view mirror immedi-

ately behind him. He pulled over, because he was coming to a four-way intersection of two freeways, to allow the suspect to get ahead of him.

A pursuit ensued that would remind you of the Dukes of Hazzard or something you see on television, as it went north on Interstate 15 and across the center divider, south on Interstate 15, up the banks, down the banks and than west on Highway 78.

Twice during that time, the suspect, Mark Phelps, pulled over to the side of the road and began shooting at the deputy, who stopped on the center divider, across three lanes of freeway traffic. He was using his MAC-10 and another assault rifle.

The deputy tried to return fire when it was safe to do so, but was ineffective with both a shotgun and a handgun. And then the suspect fled the wrong way up the on-ramp to the freeway into a crowded shopping area. The deputy waited a minute, followed him up the on-ramp, and guess what? He found him again lying in wait with his MAC-10 and his semiautomatic .30-caliber, and he opened fire again. The deputy did not return fire because of the crowded area.

Ultimately, to draw this to a conclusion, the fellow fled on foot into a crowded furniture store, with some 50 customers and salespeople in that store. The thing that averted a major tragedy there probably was the fact that the store manager recognized Phelps from newspaper pictures and TV coverage from the earlier shooting incident, and was able to talk him into putting his guns down with the promise of escorting him out of the rear door of the store. And when he did, he was met at the back door and captured at gun point by responding deputies.

Now, my conscience is shocked as much as anyone else in this country by Patrick Purdy's slaughter of school children in Stockton, CA. I was shocked earlier when James Huberty murdered a whole group of people in a fast food restaurant in my county.

It is happening daily on the streets, and I don't know how many more cops have to be killed or how many more school children have to be killed or how many fast-food patrons who are there to buy hamburgers have to be killed and shot up before this Congress does something.

We responded in 1934 to a proliferation of machineguns across this country in the hands of gang members and hoodlums, and we should do the same thing now with these assault weapons.

Thank you.

Senator SIMON. Thank you, Sheriff.

[The prepared statement of Mr. Duffy follows:]



## NATIONAL SHERIFFS' ASSOCIATION

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TESTIMONY

CHARLES (BUD) MEEKS  
EXECUTIVE DIRECTOR

of

Sheriff John F. Duffy, San Diego County  
Chairman  
Law and Legislative Committee  
National Sheriffs' Association

before the

United States Senate Committee on Judiciary  
Sub-Committee on the Constitution  
Honorable Paul Simon, Chairman

on

Proposed Legislation to Ban the Sale and Use of  
Semi-Automatic Assault Weapons

May 5, 1989

## THE WITNESS

John F. Duffy is serving his fifth consecutive 4-year term as Sheriff of San Diego County, California. Before his first election to this non-partisan office, he spent 17 years rising through the civil service ranks. San Diego County has 2.3 million residents in 4,300 square miles. Sheriff Duffy has almost 2,100 employees and his current budget is almost 100 million dollars.

The Sheriff serves on the Executive Board of the National Sheriffs' Association (NSA) which is based in the Washington area, and is Chairman of the Law and Legislative Committee for NSA. He is the Chairman of the Commission on Accreditation for Law Enforcement Agencies (also based in the Washington area) and is a member of the National Institute of Corrections Advisory Board, appointed by the U. S. Attorney General.

Sheriff Duffy is Immediate Past President of the Police Executive Research Forum based in Washington, D.C. and served as a presidential appointee to the National Institute of Justice Advisory Board in Washington, D.C. until that Board was eliminated by the Congress in 1985.

The Sheriff's wife is a Probation Director in San Diego County. He has four children (one a deputy sheriff) by a former marriage and ten grandchildren. All are residents of San Diego County.

## Testimony

By Sheriff John F. Duffy

Friday - May 5, 1989

Good morning. I am John F. Duffy, Chairman of the National Sheriffs' Association's Law & Legislative Committee. I have been in that position for more than five years and have been deeply involved in Federal legislation and administrative matters affecting the 3,300 sheriffs in this nation. I am also the elected Sheriff of San Diego County, California, and I am currently serving my fifth consecutive 4-year term which expires in January 1991.

I started my career with the San Diego County Sheriff's Department in May of 1953 as a deputy sheriff and rose through the Civil Service ranks for 17 years before my first election in 1970. I held several command assignments throughout the Department before my election as the Chief Law Enforcement Officer in my area.

San Diego County has a population of 2.3 million residents within 4300 square miles. My department provides direct law enforcement services to 700,000 residents of the unincorporated areas and in nine incorporated cities which contract with the Sheriff for law enforcement. In addition, my department provides support services, such as helicopter, crime lab, records, training and specialized investigations to the nine police departments in our County. I also operate the County's jail system which serves all agencies.

I am honored to be invited to appear hear this morning and testify before the Subcommittee on the Constitution as you consider two bills to ban the sale and use of semi-automatic assault weapons--S. 386 and S. 747. The Legislative Committee of



the National Sheriffs' Association, which I chair, and the Executive Committee of our association upon which I serve, have both voted unanimously to support S. 386 or similar legislation with the proviso that rim-fire .22 caliber weapons not be included in the definition as assault weapons. The Resolution of the National Sheriffs' Association regarding this support is attached to my written testimony.

While I have been professionally involved in a number of national law enforcement organizations and have served in several advisory capacities to presidents, governors, and attorneys general, all of my law enforcement career has been with the San Diego County Sheriff's Department. Over my 36 years I have observed many changes in my County and in this country that have dramatically altered policing and the risks confronted daily by officers in the streets. We have indeed reached a sad state of affairs in this country and in San Diego County with guns, drugs and gangs.

San Diego County currently holds a number of dubious distinctions that will seldom be discussed by our Chamber of Commerce or civic leaders. We are the "Methamphetamine Capitol" of the United States because we seize 25 percent of all the clandestine labs in the United States and 50 percent of those in California. The Drug Use Forecasting (DUF) project of the National Institute of Justice has demonstrated that 83 percent of San Diego's street felons booked into jail test positive for drugs. This is second only to New York City among the 12 major cities participating. Of those testing positive for two or more drugs, San Diego is Number 1, ahead of New York City. Not surprisingly San Diego is Number 1 by far with those testing positive for methamphetamine (more than twice the Number 2 city), and sadly enough, San Diego is tied for the Number 2 spot with Washington, D.C. behind only New York City in those who tested positive for Heroin.

Far more weapons are seized by the San Diego Division of the Drug Enforcement Administration (DEA) than any other division in the

United States. The DEA seized 5,304 firearms in fiscal year 1988 in the United States; 884 (17 percent of the total) were seized in San Diego. The next nearest city was Houston with 511, then Miami with 409. The significance of these seizures is that they were made by an agency whose only responsibility is to enforce Federal drug law violations. When we predicted that narcotics trafficking patterns would simply shift from Southern Florida to Southern California and the Gulf area of Texas, if the Vice President's South Florida Task Force succeeded, we did not realize how accurate we really were. What we overlooked was that San Diego and Houston would also replace Miami in the proliferation of firearms among drug dealers. That oversight was complicated by the tremendous growth in the possession and use of firearms, particularly machine guns and semi-automatic assault rifles by drug dealers and gang members.

During my 36-year career in San Diego County, I have observed us go from a time when those involved with drugs would never consider carrying a firearm of any type, to the present situation where virtually all drug arrests and lab seizures result in significant firearms seizures. About 50 percent of the hundreds of weapons seized concurrent with the seizure of 322 methamphetamine labs over the past two years in San Diego County were firearms of the type that S. 386 and S. 747 attempt to regulate and ban. The picture in the San Diego narcotic trafficking world a few years ago was quite different. At first, nobody carried guns. Then we saw armed "rip-offs" of the money from drug buyers, so the buyers began to carry handguns. This was followed by "rip-offs" of the narcotics at gunpoint, so then the drug sellers began carrying handguns. About that time most police agencies changed their undercover buy tactics because of all the handguns. We would no longer allow undercover officers to make the buy out of sight of the protection of close surveillance. We thought that was a tough situation then, but we had not seen anything yet.

As the appetite for drugs (particularly cocaine and methamphetamine) spread across this country like wild fire, and efforts at interdiction of cocaine and suppression of meth labs became overwhelmed by numbers, the drug traffickers grew bolder. They have grown in numbers, sophistication, and pose a clear danger to law enforcement officers and the innocent public.

Gangs involved in drug trafficking currently control entire neighborhoods and protect their interests and territory with firearms made for waging war. Drive-by shootings in the neighborhoods and assaults upon peace officers with these Weapons of War are becoming commonplace in San Diego and elsewhere in the nation.

I would like to share some recent experiences regarding my own department. Last month my deputies in the City of Vista disarmed a man carrying a fully loaded AK-47 semi-automatic assault rifle in the early morning hours, after receiving a call of shots fired in the area. Responding deputies had a standoff with the man at gunpoint after encountering him in a residential neighborhood where he had fired numerous rounds into a tree. The man had been in an argument with his girlfriend and was under the influence of drugs. He had simply become enraged and he used a Weapon of War to terrorize his entire neighborhood. This armed confrontation with my deputies ended without injury because the sergeant grabbed the gun during the standoff when he was distracted. The sergeant was quoted as saying, "The guy could have had us at any time."

A similar incident involving an AK-47 a year and a half ago did end in tragedy. In the City of Escondido a methamphetamine abuser, who was also an avid collector of military weapons and other types of firearms, began shooting through the walls of his apartment into the adjoining apartment because he "didn't like Mexicans." The police came to the scene, arrested the man,

Gary Taschner, and confiscated an entire arsenal of weapons, including a machine gun and an AK-47 assault rifle.

After being released from jail pending trial, Taschner went to a local gun dealer, paid cash and walked out with another AK-47 military assault rifle and ammunition. He returned to his apartment and began shooting through the walls again, this time slightly injuring a small baby in a crib next door. The police were again called to the scene and assumed that they had possibly overlooked a handgun during their earlier search. They didn't know that Taschner had acquired another AK-47 and hundreds of rounds of ammunition. They were unable to negotiate his surrender and called for the Sheriff's Department's SWAT team.

My deputies responded and after six hours of attempted negotiations and tear gas being fired into the apartment, the Entry Team hit the door to effect the arrest. They were wearing heavy protective vests and helmets. As they attempted to enter the door they were met with a hail of semi-automatic weapons fire from Taschner who had built himself a "nest" and was lying in the prone position across the room lined up on the door. Two deputies were wounded by the massive fire power and one, Lonny Gene Brewer, bled to death with a severed aorta.

After several more hours of attempts to extract Taschner, my bomb squad simultaneously blew holes in the side walls of the apartment to affect a surprise entry. Taschner then burst from the front door, dressed in the same kind of camouflaged clothing the SWAT team deputies were wearing, blazing away with his AK-47 assault rifle. Distant television cameras, with their zoom lenses, recorded the scene as Taschner charged forward like Rambo firing from the hip. Perimeter SWAT deputies initially hesitated to shoot because they thought it was one of the Entry Team members. Then they noticed the difference in his weapon and that he was bearded. As he rounded a fence corner, he encountered two SWAT deputies. He tried to kill both of them, but the AK-47

misfired and he was shot to death by the deputies. The television cameras recorded the tragic end of a mad man with a death wish in time for the evening news.

That incident highlights the ease with which a violent drug abuser can obtain a military assault rifle, with no waiting period such as California requires for a far less lethal handgun. This allows someone like Taschner to terrorize an entire neighborhood, endanger numerous citizens, kill one deputy sheriff, wound two others and almost kill two more. These deputies who were highly skilled specialists and relied on the information received about the previous confiscation of all weapons. When the entry was attempted, they didn't expect to encounter the deadly fire-power of a military assault rifle, designed in Russia and manufactured in Red China, for the specific purpose of killing human beings.

Nothing this Congress can ever do will restore the young life of Deputy Sheriff Lonny Brewer or erase the anguish of his widow (who was also a deputy sheriff) or remove from the memory of the people in that neighborhood the terror they experienced. This Congress can, however, enact the laws that will help prevent this kind of tragedy from occurring again.

The final incident I would like to describe today occurred three months earlier in the City of Vista. Deputy Sheriff James Bennetts had just finished taking a burglary report on a Friday afternoon when he observed a well known methamphetamine abuser and trafficker who was wanted on a felony, no-bail weapons warrant. The suspect was driving a red convertible Porsche. The deputy began to follow and radioed the information. The suspect refused to stop and a high speed pursuit followed. During the pursuit the suspect, Mark Raymond Phelps, was able to get far enough ahead, and round a corner in a residential area with children playing in their front yards. He suddenly stopped



in the middle of the street, crouched in the open convertible car armed with a MAC-10, and waited to ambush the pursuing deputy. The deputy rounded the corner and Phelps opened fire on the patrol car as it was coming to a stop and before the deputy could even alight from his vehicle.

I have four exhibits here that more graphically convey what Deputy Bennetts faced that Friday afternoon than I could possibly describe. Phelps fired somewhere between 75 and 90 rounds. As the photographs clearly illustrate, he "killed" the patrol car and very nearly killed Deputy Bennetts who was severely wounded in the hail of gunfire and was saved only by his protective vest. Other deputies monitoring the pursuit arrived in a minute. The bleeding deputy was rescued, but Phelps escaped through nearby yards and into the surrounding hilly area. Fortunately, none of the children playing close by were injured, but an entire neighborhood was terrorized with a Weapon of War that is a favorite among drug dealers. The neighborhood was further disturbed all through the night as a house-to-house and shed-by-shed search by deputies, aided by noisy helicopters, disrupted the tranquility of that neighborhood and added to the fear of those residents.

Phelps eluded capture that night but the search went on all weekend. On Sunday afternoon, a possible vehicle description and license number was telephoned to the wounded deputy's hospital room where two on-duty patrol deputies were visiting. They immediately left the hospital, en route back to their respective beats. One of the deputies, Alfred MacKille, saw the suspect vehicle in his rearview mirror less than five minutes after he left the hospital.

Since he was approaching an intersection of two major freeways and didn't want to lose the suspect, he pulled over and let the suspect pass his patrol car. As he fell in behind, another

pursuit ensued as Phelps engaged in the wildest form of driving north on Interstate 15, south on Interstate 15, west on Highway 78 (with the patrol car in pursuit), creating a scene straight out of "Dukes of Hazard". Twice on Highway 78 Phelps pulled to the shoulder and began firing his fully automatic and semi-automatic weapons across the lanes of traffic towards the patrol car which had pulled into the center divider. The deputy attempted to return fire, when it was safe to do so with a shotgun and later with a handgun, but was ineffective in the face of a MAC-10 and a .30 caliber semi-automatic rifle.

The suspect then drove the wrong way, up a freeway on-ramp, to the surface streets. The deputy waited a moment and followed the same route. He found Phelps again lying in ambush as he came up the on-ramp and he was again fired on. The deputy didn't return fire because of the crowded area. The suspect vehicle then fled into a crowded parking lot of a shopping mall and ultimately sought refuge in a furniture store containing approximately 50 people. The manager of the furniture store, who recognised Phelps from the newspaper and television broadcast of the earlier shooting, maintained a very cool demeanor despite the agitation of Phelps. He was able to talk him into giving up the two assault weapons he was carrying and then escorted him to the rear door of the store and outside where he was captured at gunpoint by responding deputy sheriffs.

For his relentless pursuit and his restraint when the public safety was endangered, Deputy MacKille was one of the Top 10 Police Officers of the Year, by Parade Magazine and recognized in Portland at the International Association of Chiefs of Police annual conference last year.

These incidents are becoming commonplace. The danger facing officers on the street now could not have been imagined in my early days as a young deputy and patrol sergeant. The tragedy at

the Stockton school yard involving Patrick Purdy, and the tragedy in San Diego, known as the McDonald massacre, involving James Huberty has shocked my conscience as much as it has shocked the conscience of an entire nation. The massive fire power that those school children encountered in Stockton and those restaurant patrons encountered in San Diego, however, is increasingly faced by law enforcement officers on an all too frequent basis and something must be done by this Congress.

It is only logical, as we find ourselves in the midst of all this automatic and semi-automatic weapons fire, that the United States Congress follow the same course of action that it did in 1934 when it responded to the machine gun fire in the Banks, Stores, Small Towns and Big Cities across this land emanating from the gangsters and hoodlums who had, for the most part, "outgunned" the police. Up to that time machine guns were unregulated, but the danger to the citizens and our police prompted our Congress to change that. A similar condition now exists. Citizens and law enforcement officers across this land are now endangered by indiscriminate gunfire from roving gangs, drug dealers, half-crazed drug abusers and some persons who are simply insane.

I urge this Committee, this Congress and our President to follow the example of the Congress who acted responsibly in 1934. Senate Bill 386 and S. 747 substantially treats semi-automatic military Weapons of War like the Congress did with machine guns 55 years ago.

On behalf of the County Sheriffs across this land, each of whom have been elected by the citizens of their county and each of whom are sworn to protect and defend the people in their counties, and to uphold the law in their respective jurisdictions, I implore you to please give us some relief now!

Thank you again for the opportunity to appear before this distinguished Subcommittee and to share with you some of the things that are going on in the real world, out in the streets, away from the rhetoric of the special interest groups on all sides of this issue here in Washington.

I have attached to my testimony some news clips from the San Diego area papers which report the incidents in more detail than I have described. I have also attached a copy of the Eulogy that I was required to compose and deliver for the services honoring San Diego County Deputy Sheriff Lonny Gene Brewer. Deputy Brewer was not killed by an AK-47 in the jungles of Vietnam, but rather was killed by an AK-47 in a residential neighborhood, in the quiet city of Escondido, California. How many more officers will die in our streets? How many more children will die in our school yards? How many more citizens will die in our fast food restaurants before we do our utmost to end the killing?



# NATIONAL SHERIFFS' ASSOCIATION

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## RESOLUTION

CHARLES (BUD) MEEKS  
EXECUTIVE DIRECTOR

### National Sheriffs' Association Support of the S. 386

- Whereas, America's Sheriffs have major responsibilities for local law enforcement in the United States; and
- Whereas, Sheriffs, their officers and deputies are being confronted with criminals, including narcotics violators and other violent criminals; and
- Whereas, narcotics violators and other violent criminals frequently arm themselves with assault type semi-automatic weapons and misuse these weapons in the pursuit of their criminal activity against law enforcement; and
- Whereas, the continued use of these assault weapons has contributed to the rising number of murders of law enforcement officers and innocent civilian victims
- Therefore, BE IT RESOLVED that the National Sheriffs' Association goes on record as strongly supporting the Congress of the United States passage of Senate Bill-386 or similar legislation at the Federal level.



## Vista man is disarmed; AK-47 rifle confiscated



Doranne Hardt Vista Press

Sheriff's deputy Paul Rose displays an AK-47 semi-

automatic assault rifle that was confiscated Monday in Vista.

By GEORGE McCORRY

Vista Press staff

A Vista Sheriff's deputy disarmed a man carrying an AK-47 semi-automatic assault rifle early Monday morning on East Los Angeles Drive after he received a call of shots fired in the area.

Isaias Huitron, 37, of the 200 block of East Los Angeles Drive was taken into custody after Sgt. Mark Coppes took the loaded assault rifle away from him. The rifle was manufactured in Hungary and was imported through an East Coast firm.

Coppes, along with deputies Bill Anderson and Mitch Clements, had heard the shots in the area and responded. Huitron, who was wearing a poncho, had allegedly been firing shots into a tree in the 100 block of East Los Angeles.

As Coppes pulled up into a driveway, he saw a man who directed him to

Huitron, who was standing a few feet away. Coppes drew his gun and Huitron revealed the assault rifle. Coppes then grabbed the gun while Anderson and Clements grabbed the suspect.

"The guy could have had us at any time," said Coppes.

According to Deputy John Mander Huitron was apparently involved in a fight with his girlfriend over the custody of his child. The girlfriend had run to a nearby apartment when she heard shots fired behind her.

Huitron told officers that he had bought the gun from a friend a year and a half ago. Deputies found six expended shells at the scene and confiscated 58 rounds from Huitron.

Huitron was charged with shooting at an inhabited dwelling, possession of stolen property and injury to a spouse and was being held on \$10,000 bond.

Paper Vista Press  
Date 3-7-79  
Page 1 of 1

# Deputy, Gunman Slain in Deadly Escondido Standoff

By DAVID SMOLLAR,  
Times Staff Writer.

A San Diego County deputy sheriff was killed and two others were wounded by a heavily armed gunman who was slain at the end of a bloody, 12-hour siege at an Escondido apartment complex Saturday.

Officers killed the gunman at sunset as he ran from his apartment on Mission Avenue, firing an AK-47 automatic assault rifle. The apartment had been set ablaze by a bombardment of tear gas grenades and concussion bombs.

The slain deputy, Lanny Brewer, 29, of El Cajon, was a seven-year veteran of the force, the last two years as a member of the elite Special Weapons and Tactics (SWAT) unit. Brewer died of a massive chest wound despite emergency surgery at Palomar Memorial Hospital. He was only the third member of the department killed in the line duty in this century. Sheriff John Duffy said late Saturday.

## Unsuccessful Assault

Officer Scott Rossall, 31, of Encinitas, was in good condition at Palomar Hospital with a wounded leg. A third SWAT officer, Chuck Wagner of North County, was treated for a superficial finger wound and then released.

Brewer and Rossall were shot during an unsuccessful morning assault on the apartment of Robert Gary Taschner, 37, an apparent weapons enthusiast and suspected drug user who was well-known to

## Escondido police.

Taschner died in a hail of gunfire as he charged from his burning apartment with his rifle, wounding Wagner.

Taschner had been arrested Tuesday for alleged weapons and drug violations but posted bail Thursday and returned home. Escondido police confiscated numerous weapons from Taschner's apartment during the Tuesday arrest, spokesmen said late Saturday.

The deadly chain of events began at 10:30 p.m. Friday at the Fairwinds Town House, 900 East Mission, after a neighbor of Taschner reported a shot fired through the wall into her apartment, Capt. Mike Stein of the Escondido police said.

Police who responded found no sign of Taschner and left after taking a report from the neighbor, he said.

At 4:15 a.m. Saturday, police received another call regarding shots fired at the apartment complex. When they arrived this time, Taschner was in his apartment but unwilling to talk with them, Stein said. A police negotiation team was called in and made intermittent phone contact.

## Called for Assistance

"He would talk for a while in a muffled voice, and it was hard to ascertain what his desires were," Stein said. "[Some officers] felt that he wanted them to move closer to

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# SIEGE:

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the apartment (so that he could fire at them)." Stein said "our best guess" is that Taschner was under the influence of drugs.

As a result of the standoff, Escondido police called for assistance from the sheriff's SWAT team about 6:30 a.m. At the same time, police began evacuating residents of the complex and from houses facing the two-story building. Spectators at the Grant Middle School across Mission Avenue from the apartments were also moved from the area.

The SWAT team arrived about 7:20 a.m. and moved into position around the building for an assault, sheriff's spokesman Lt. Alan Fulmer said.

"At 9:50 a.m., the team fired tear gas into the apartment in order to 'quash him (Taschner) out,'" Fulmer said. "It did not work. He did not come out, and at 10 a.m., the team decided to force entry."

With tear gas still in the air, the entry team—which included Brewer and Rossall—forced the ground-floor door of the two-story apartment and were immediately met by gunfire from Taschner who was in a prone position 15 feet inside the apartment, Fulmer said.

Fulmer said Rossall was the first officer hit. He was struck in the leg and spun around as he fell to the ground in the parking lot in the building entrance before being helped to safety by fellow officers. In the confusion of noise and gas, Fulmer said, the assault team did not realize that Brewer had also been hit.

"It was 10 to 15 minutes later that the team realized that Brewer had not fallen back with them," Fulmer said. "They then saw him lying between vehicles in the parking lot and tried to rescue him."

## Decision Defended

Brewer was taken by paramedics to Palomar Hospital, where a surgical team led by Dr. Thomas Velky labored for more than two hours to try to save Brewer's life. Velky said a single bullet had entered Brewer's back just behind the left shoulder and passed through bone to lodge in his chest just above the heart. "It was in all probability a lethal injury, . . . and he was probably dead at the scene," Velky said.

Fulmer and Sheriff Duffy defended the decision to assault the apartment despite the fact that Taschner held no hostages. "We have [these situations] at least three times a year, but they are dangerous, goddamn it," Duffy said. The sheriff spent much of the afternoon with Brewer's wife, Kathy, also a deputy sheriff and who was on traffic patrol duty Saturday in Poway. The couple had been married only three weeks and Saturday was Kathy's birthday, Fulmer said.

Stein said the information about Taschner's weapons arrest was given to the SWAT team when they arrived Saturday morning.

After the wounding of the deputies, the SWAT team continued its siege, with Escondido police shouting periodically to Taschner in an effort to get negotiations started again. At one point in the afternoon, police shouted a telephone number to Taschner, adding, "Gary, we'd like you to drop your gun, open the door, come down here and have your hands out . . . Gary, talk to me, I can't quite hear you."

Escondido police captain Stein said that Taschner's father came to the command post during the afternoon and talked with police negotiators. "In our opinion, the relationship between the son and father was such that [the father] was not going to be of help," Stein said, adding that Taschner talked at times about "going out into space" and was in general irrational in his comments.



In the late afternoon, SWAT officers from the San Diego Police Department's team arrived in their special armored assault vehicle, which ironically has been put up for sale by the department because of its limited flexibility. Sheriff SWAT officers joined the city team and prepared for another assault attempt.

"The decision to go again was predicated on it soon becoming dark," Fulmer said. "These things are hard to do in the dark."

The armored vehicle rolled up the alley at 4:32 p.m., and officers fired tear gas grenades and poured arms fire into the apartment from the vehicle, shattering the windows and sending smoke through the roof. At the same time, explosive experts from the Sheriff's Department entered the apartments on each side of Taschner's and planted two concussion grenades on the walls. SWAT members planned to enter the apartment through holes blasted by the grenades.

However, Fulmer said that only one concussion grenade went off—to the cheers of neighborhood onlookers—and did not make a hole large enough for a deputy to enter. But with the apartment ablaze from the sustained, heavy gunfire, Taschner ran out the front door, firing his weapon, Fulmer said.

SWAT team members initially held their fire because Taschner was wearing military fatigues similar to those of the sheriff's SWAT team and they could not be certain

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DAVID McNEW

Firefighters, above, battle blaze at Escondido apartment of slain gunman Robert Gary Tas-

chner, 37. SWAT team members, below, move into position during the deadly 12-hour siege.

he wasn't an officer, Fulmer said.

"There followed an exchange of gunfire, and he was hit several times," Fulmer said. Taschner's body was handcuffed and left face down on a thin strip of grass for several minutes in front of the apartment complex before being covered with a blanket.

Firefighters had to wait almost 10 minutes for ammunition inside the apartment to stop exploding before they entered to fight the fire.

"Brewer was a fine officer . . . you have to be to be on the SWAT unit," Duffy said.

Only two members of the department have been killed in the line of duty before Saturday, Duffy said. Kelly Bazer, a sheriff's cadet, was shot in the back Jan. 13, 1986, after being surprised by a robber as he was leaving a supermarket. Bazer was in uniform but off duty at the time. Duffy also said a deputy was killed in the 1930s while transporting a group of criminals to San Quentin State Prison from San Diego.

Times Staff Writer Richard Serrano contributed to this report.

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Police stand over the body of gunman Robert Gary Taschner, 37, after a 12-hour siege that also cost the life of a deputy.

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Tribune photo by Joel Zwick

SOLEDAD HERNANDEZ AND INFANT SON, LEONEL, LOST HOME IN SHOOTOUT  
The family's apartment was wrecked by gunfire and a police bomb

## Shots pierce family security

*Neighbors' home total loss in SWAT attack*

By Lola Sherman  
Tribune Staff Writer

Soledad and Arnulfo Hernandez, holding their infant son, could only stand in the doorway and gaze disconsolately at the destruction of what once had been their home.

Escondido police officers would not let the couple inspect the premises more closely yesterday.

Officers had planted a bomb in the Hernandez's apartment Saturday in an effort to blow a hole in the wall and enter the apartment next door, which was occupied by a gunman who had killed a sheriff's deputy during a daylong siege.

Police shot Robert Gary Taschner, 37, to death when he ran from his burning apartment on East Mission Road shortly after the blast.

In the apartment on the other side of Taschner's residence, the bullet holes were so numerous that Ana and Jose Luis Madrigal had not counted them. The Madrigals live in the apartment with their children, David, 7; Ana Luisa, 12; and Lupe, 14; and Madrigal's mother, Gloria Soberanes. Entire walls were riddled with holes, but they will be able to continue living in the apartment.

Bullets damaged vehicles and broke windows in an

adjacent apartment complex.

Only the Hernandez home was a total loss.

As they looked through the gaping hole in the front of the apartment, Soledad and Arnulfo could see that nothing was salvageable in the living room. Their furniture lay in splinters.

The kitchen was destroyed, as were their possessions, Arnulfo said. Soledad said she even lost her baby's birth certificate.

Asked what she would do now, the tiny teen-age mother said, "I don't know." Her husband's reply was the same.

They had no furniture, no clothes, no blankets, no food and no money.

Still, they considered themselves fortunate because their 8-month-old son, Leonel, had been asleep Friday night when the first shots were fired.

They said a shot knocked plaster off the wall, and a piece of the plaster struck the baby's eyelid. Had he been awake, with his eyes open, they feared his eye would have been injured.

As he played in the safety of the nearby Madrigal home, the red scratch on Leonel's eyelid was visible.

Management of the apartment building will allow the Hernandez family to move immediately into a

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*Sup. / Shooting*

## ★Victim—

*Continued From B-1*

vacant unit, although it has no furnishings.

The Red Cross stood ready to help. Pat Goeptert, assistant executive director of the regional Red Cross headquarters in San Diego, said the family would be provided food, clothing, furniture, linens, utensils and baby-care items.

The neighbors said they knew Taschner only by sight.

"We knew him to say 'Hi,'" Ana Madrigal said. "But that is the only thing that we could say because he did not speak or understand Spanish."

She said no one knew Taschner had an arsenal in the apartment. Ana Madrigal said she had never seen him with a gun, but she did know that he often took his motorcycle into the apartment at night.

Taschner was unemployed. Earlier last week police had confiscated weapons from his apartment.

"All day he was here — locked in," Ana Madrigal said.

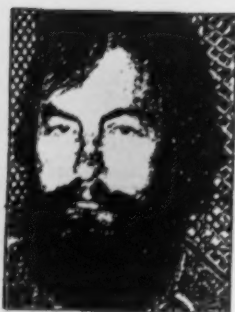
"He was a person who did not have companions," her husband added.

Jose Madrigal, who speaks English, said he sometimes asked Taschner about living alone, visited only occasionally by his ex-wife and daughter.

"He said he did not like companions, that he just wanted to be alone," Madrigal said.

Taschner never invited anyone into his apartment, Madrigal said.

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Robert Gary Taschner  
'chronic' mental illness

## Origin of death gun still a mystery

By Terry L. Colvin  
Staff Writer

ESCONDIDO — The rifle slain gunman Robert Gary Taschner used to shoot a sheriff's deputy to death Saturday was not the same gun that was confiscated from him during an arrest two months ago, police said yesterday.

"We have that rifle," said Lt. Earl Callander. "In fact, we have a lot of Mr. Taschner's guns."

Just where Taschner acquired the assault rifle he used in the slaying of Deputy Loony Gene Brewer, 29, is still not known, Callander said.

Police took several other guns away from Taschner as recently as Dec. 1. Officers theorize that he had the rifle stashed in his car or at a location other than the apartment searched by police. He also could have purchased the gun locally, police said.

The rifle, an AK-A Chinese-made assault rifle that is being scrutinized by the sheriff's crime lab, is nearly identical to one police took from Taschner on Oct. 17, Callander said.

Taschner and his brother were stopped by Escondido police who found a loaded AK-47 rifle on the

back seat of Taschner's car. A loaded .12-gauge shotgun was also discovered under the front seat, Callander said.

The AK-A is a Chinese replica of the AK-47, a Soviet-made attack rifle that is in wide use throughout the world. That fact led to confusion by police who initially feared that Taschner's AK-47 had been returned to him after the arrest.

"He would have had a hard time getting that gun back," Callander said. "It would have required a court order, and we would have fought that."

But police said nothing precluded Taschner from purchasing a new assault rifle, and investigators have not ruled out that possibility. Gun dealers said that under federal law, all Taschner had to do was fill out a brief form and the rifle — which sells for around \$250 — was his.

During a search of Taschner on Oct. 17, officers also discovered in his wallet a small quantity of methamphetamine, commonly known as "crystal." Both men were arrested and charged with carrying loaded firearms in an automobile. Taschner was also charged with pos-

session of the drug. All the charges were misdemeanors.

But the drug charge raised another question for police that has yet to be answered: Whether Taschner, who his wife said had mental problems, was using methamphetamine during Saturday's fatal assault.

Results of toxicology tests conducted on Taschner's blood during an autopsy Monday will not be known for at least 10 days, according to the coroner's office.

Methamphetamine, which causes sleeplessness and speeds up the me-

See Death gun on Page B-4

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Deputy / Shooting

## Death gun: Origin a mystery

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tabolism of users, is known to aggravate mental illnesses such as schizophrenia. Taschner, an Army veteran, was forced to leave his job as a groundskeeper for Escondido because of his mental condition, according to one of his two ex-wives, Gail Taschner.

Dr. Richard Wachsmen, a San Diego psychiatrist, said Taschner suffered from chronic psychiatric illness that began in 1983. Wachsmen's conclusions were part of written testimony contained in Gail Taschner's 1985 divorce case.

Wachsmen, who could not be reached for comment yesterday, also wrote that Taschner was hospitalized for psychiatric treatment in 1983, shortly after he married the second time.

In 1984, Taschner was ordered by the court to undergo counseling after his wife charged him with misdemeanor battery. The charge was dismissed after Taschner completed treatment.

Taschner's next brush with the law came during last October's arrest when the first two guns were taken from him.

On Dec. 1, police again arrested Taschner after neighbors complained of gunfire coming from his apartment on East Mission Avenue. The officers confiscated a shotgun and several black-powder guns that are replicas of firearms used before the turn of the century.

In that incident, he was charged with possession of two illegal weapons — nunchakus and a billy club — as well as "exhibiting a deadly weapon in a rude, angry and threatening manner," according to court records.

The last charge, according to Callander, was based on a gunshot that was fired before police arrived at the apartment complex.

Callander characterized Taschner's demeanor toward the officers on Dec. 1 as "very cooperative."

"He didn't give us any trouble then," Callander said. "He let the of-

ficers into the apartment and showed them where the guns were."

Taschner was released from jail three days later. Municipal Court Judge Ramon "Tony" Maino signed the order setting him free on his own recognizance.

Taschner's release was considered routine because there was nothing in his background that indicated he was a threat to the community or that he would not show up for court appearances, court officials said yesterday.

That was in marked contrast to Taschner's behavior early Saturday when police arrived to investigate reports of more gunshots from Taschner's apartment. One of the bullets had punctured the bedroom wall of an apartment next door, police said.

Escondido officers, unable to talk Taschner out of his apartment, summoned the sheriff's tactical unit, the Special Enforcement Detail, who blasted the residence with tear gas, then stormed the building after a six-hour standoff.

Inside, Taschner opened fire with the 223-caliber AK-A rifle, wounding the first officer who came through the door, Deputy Scott Rossall, 31. Rossall was hit in the left leg. His wound was not serious.

But Brewer, a 7½-year veteran of the Sheriff's Department, was shot by a bullet that hit him in the left arm and tore into his chest before lodging near his heart. He died at the scene as fellow deputies tried to revive him with cardiopulmonary resuscitation.

About 6½ hours later deputies stormed the apartment again, this time setting off explosive charges — one to distract the suspect and the second that was to have blown a hole in the wall of an adjoining residence big enough for the officers to scramble inside Taschner's apartment.

But one of the sheriff's bombs did not go off and a second gunbattle ensued. Taschner finally fled the apartment when it erupted in flames from a fire that had been started by one of the explosive charges.

Taschner burst from the apartment firing his rifle. One of the shots hit Deputy Chuck Wagner in the hand before Taschner was cut down by police bullets. A coroner's report said Taschner's body had 37 gunshot wounds, including several that were caused by deputies who fired shotguns loaded with 00 buckshot at the suspect.

The final shot was fired by an unidentified deputy as Taschner lay on the ground. It touched off a controversy between authorities and some witnesses who said it appeared that the deputy fired the last shot execution-style at point-blank range after Taschner had been handcuffed.

Callander, whose detectives are investigating the incident, would confirm only that the final shot hit Taschner in the left side of his face.

"The shooting investigation is continuing and we're not going to make any remarks about it now," he said yesterday.

Sheriff's officials have disputed the allegation that Taschner was already handcuffed when the last shot was fired. They said all of the gunshots were necessary to subdue the gunman.

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*Deputy Shooting*

# 1,000 fellow officers attend services for slain deputy

By Darlene Himmelspach, Staff Writer

More than 1,000 law enforcement officers from around the state paid tribute yesterday to the first San Diego County sheriff's deputy to die in the line of duty in this century.

Lanny Gene Brewer, 29, was gunned down Saturday as he and other Special Enforcement Detail officers stormed the apartment of Robert Gary Taschner, who had barricaded himself and exchanged fire with officers. Taschner was later killed and two other deputies wounded.

In all, an overflow crowd of some 2,000 mourners packed themselves into First United Methodist Church in Mission Valley, then spilled into its basement and finally outside, where they listened to the service over loudspeakers.

Their badges taped in black, sheriff's deputies, members of the SED, park rangers, and police and California Highway Patrol officers by the hundreds spent 45 minutes filing past Brewer's casket and saluting before hearing Sheriff John Duffy eulogize him as a "man of high principles."

"He was the kind of man others instantly trusted and liked because he was so genuine," the sheriff

■ Officer stopped man the day before he killed deputy—B-14

said.

Duffy raised his voice in anger when he said that the bullet that ended Brewer's life had been "fired by a madman with a death wish. (Robert Gary Taschner) was a loser in life but he succeeded in destroying Lanny's life and happiness for his wife Cathy and both of their families."

As sunshine streamed onto the flag-draped casket at the front of the church, Pastor George R. Gregg prayed for strength for the slain deputy's family.

"What shall we say of a man who goes to college to prepare himself for a career in law enforcement because he chooses a life of service? What shall we say of a man who, when people speak of him, say he was kind, gentle and loving? What shall we say of a man who dies in the line of duty?"

"We say he is a good man," Gregg said.

"Here was a man who, as a weight lifter, climbed to the heights of physical strength. Yet he was wise enough to know that the true measure of a man is

See Deputy on Page B-14



Deputy Scott Rossall, wounded in the leg, leaves after Lanny Brewer's burial.

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## Deputy: Fellow officers' farewell

Continued from B-1

his tenderness and attitude."

Comparing Brewer's youth and violent death to that of Christ, Gregg said, "Life at its best is very short, yet we are stunned to lose one so young. We hope that through burning tears today, this family can see the promises beyond."

Brewer was born in San Diego and grew up surrounded by law enforcement officers. His father, Jack, was a mechanic for the San Diego Police Department, Duffy said.

After graduating from Grossmont College with a degree in criminal justice, Brewer joined the Sheriff's Department in April 1980 and moved to SED, the sheriff's special weapons unit, 2½ years ago.

Last month, Brewer married another deputy, Cathy Wiermas, a traffic officer in Poway.

The couple knew the risks of law enforcement; Cathy's father, Robert, is a retired San Diego police officer. But the knowledge was no safeguard against a man with a "Rambo-like fantasy," Duffy said.

Brewer was remembered by fellow SED member Lt. Edward J. Lubic as

"a rough and tumble character" who could handle the pressures and duties of the office unit.

Assignment to SED carries "an overtones but constant demand to be a cut above. Lenny definitely was," Lubic said.

"He had enormous physical strength yet he was a quiet, unobtrusive man, definitely a team player. He knew the risks but was committed to the job. More than a team player, he was our friend."

"In the wake of his death, there is the strength he leaves behind. We loved Lenny and we shall miss him dearly," Lubic concluded.

Brewer's "ultimate sacrifice," said Duffy, causes officers to ask "ourselves, our God and the public we are willing to die for in order to protect. Why?"

"We already know the answer. We know that we are the few who can hold the line, who can offer any hope for survival of the peace and tranquility guaranteed by the laws of our society," Duffy said.

"On his wife's birthday, Lenny Gene Brewer was killed by hostile gunfire."

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... his career and his life on the earth. The phrase will give us cause to honor and remember him forever, Duffy said.

A 10-mile-long police motorcade, lights blinking blue and red, then

escorted Brewer to his final resting place beside a pool and waterfall at El Camino Memorial Park in Sorrento Valley.

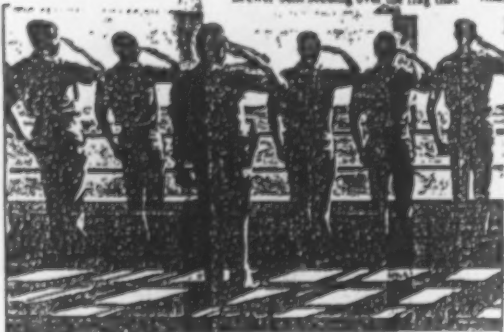
Deputy Scott Romall, Brewer's partner on the entry team Saturday, was shot in the leg by the same volley that killed Brewer. Yesterday, the 21-

year-old Escondido resident stood, shaken-faced and braced by a cane, for more than an hour as part of the SED honor guard at graveside services.

After a 21-gun salute and the haunting refrain of "Taps" played by two buglers on a nearby hillside, Cathy Brewer bent sobbing over the flag that

had draped the casket of her husband.

As a final tribute, five helicopters from the Sheriff's Department, Life Flight and the Border Patrol flew over the cemetery, one of the Sheriff's craft breaking away in the "missing man" formation.



Law enforcement officers from around the county render a final salute to slain deputy Lonny Gene Brewer, whose funeral



The San Diego Union/Alan Henschel  
A funeral procession passes below Eastgate Mall on northbound Interstate 805.

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Sheriff John Duffy escorts deputy Cathy Brewer, widow of slain deputy Lonny Gene Brewer, at graveside service.

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# Fallen comrade mourned

By Jo Moreland  
of The Daily Californian

Cathy Brewer sought comfort from a huge family Wednesday as she said goodbye to her slain husband.

The El Cajon woman clutched a flag from the casket of sheriff's deputy Lonny Brewer and shed hard tears at the burial of her husband of just five weeks.

More than 1,000 law enforcement officers from around the state and as far east as Michigan gathered with Cathy Brewer — also a sheriff's deputy — for a final farewell.

"We all enter this life with one guarantee — we will eventually leave this life and all the people we have touched," Sheriff John Duffy told the overflow crowd of about 2,000 at the memorial service at First United Methodist Church in Mission Valley.

"We have no control of our final destiny. All we can hope to control is the way we live our lives, and thereby in some small way control the quality of our death. Lonny Gene Brewer did just that."

Brewer suffered a fatal chest wound Saturday when he and fellow members of the sheriff's Special Enforcement Detail tried to enter the barricaded apartment of Robert Gary Taschner in a SWAT operation.

Taschner, 37, had started firing off shots the night before.

Earlier that week he had been arrested and released on weapons charges. Friday morning a deputy questioned and released Taschner in the

Escondido area after people complained he had been knocking on doors and shouting.

Duffy angrily described Taschner as "a madman with a death wish: one who had terrorized his former wife, his neighbors, and held police

officers at bay."

"From what we know, he was a fantasizer — a loser at life in almost every endeavor he attempted, but he succeeded in destroying life and happiness for Lonny Brewer, his wife.

Funeral 3A

## FUNERAL

Cathy, and both of their families before he played out his Rambo-like fantasy a few hours later and got his death wish," the sheriff said.

Brewer died on his wife's 29th birthday. He met Cathy Wierman while both were deputies at the Poway Sheriff's Station. They dated about two years before marrying Nov. 1.

"Both Cathy and Lonny were raised around police families," Duffy noted.

"They expect to work on weekends, holidays, even birthdays. Both of their fathers are retired from the San Diego Police Department."

He described Lonny Brewer, the son of Jack and Evelyn Brewer, as a good student at El Capitan High School in

PAPER Daily Californian

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*Chap. 1 / Attention*



John Sheppard/The Californian

More than 1,000 officers quietly snapped a final salute for a fallen comrade at Wednesday's memorial service for deputy Lonny Brewer of El Cajon. Gunman Robert Gary

Taschuer fatally shot Brewer as the SWAT deputy tried to enter the barricaded apartment of the gunman in Escondido.

in 1A

"As violence swirls around us . . . we know that we are the few who can hold the line."

— Sheriff John Duffy

Lakeside.

Brewer worked part time to support himself while he earned an associate of arts degree in criminal justice at Grossmont College. He also worked part time in the crime laboratory at the El Cajon Police Department.

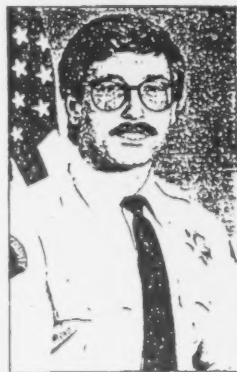
He joined the sheriff's

department in 1980, was selected for SED duty in 1985, and recently interviewed for investigative work.

Duffy, sheriff's Lt. Ed Lubic and Pastor George Gregg of Faith Chapel in Spring Valley talked about the power of a weightlifting champion as kind, with high principles and a boyish charm, quiet, unassuming, sincere, liked, a man in control and one to trust.

Brewer's death is the first in the line of duty in the sheriff's department in about 100 years, but one of many such officer deaths in San Diego County.

"As violence swirls around us and threatens to consume the fabric of our society and seems to overwhelm us, we know that we are the few who can hold the line," said Duffy.



Lonny Brewer





John Sheppard/The Callonian

Cathy Brewer, barely a bride before she was widowed, broke into tears as Sheriff John Puffy handed her the flag from husband Lonny Brewer's casket. She met Brewer while both of them were deputies at the Poway Sheriff's Station.

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## Hundreds Mourn Slain Deputy

By H.G. REZA, Times Staff Writer

Deputy Lonny G. Brewer, who died in a weekend shoot-out between a sheriff's tactical weapons team and a barricaded gunman, was buried Wednesday after a funeral service attended by hundreds of law enforcement officers from throughout the state and as far away as Michigan.

Brewer, 29, a seven-year veteran of the San Diego County Sheriff's Department, was eulogized by Sheriff John Duffy as a principled man with "no phoniness, no falstiness, no selfishness or guile in the way he treated others." Brewer, said Duffy, was "full of good faith" and exhibited "a certain boyish charm."

A member of the department's Special Enforcement Team, Brewer died Saturday when deputies attempted unsuccessfully to storm the apartment of Robert Gary Taschner, 37, in Escondido. Taschner, who was armed with a Chinese-made assault rifle, shot Brewer with a bullet that severed his aorta. The fatal bullet tore through Brewer's upper arm and entered the chest cavity, through a gap in the side of his armored vest. Two other deputies were

slightly wounded in the siege.

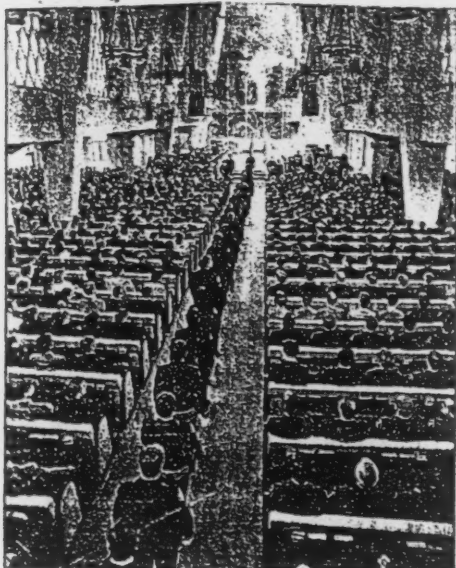
The deputies attempted to break down Taschner's front door and were met with a burst of rifle fire that sent them in retreat. The mortally wounded Brewer got as far as an adjacent carport, where he lay for as long as 15 minutes before dying. Taschner was eventually killed when he dashed through the front door of his apartment, firing his weapon from the hip, and was felled by a barrage of police gunfire.

### Fueled More Controversy

However, Taschner's death fueled further controversy over the sheriff unit's tactics when television news tapes showed a deputy sheriff firing his pistol from point-blank range at Taschner's head, as the gunman was held on the ground by other deputies. Officials have not disclosed the reason for that final shot.

On Wednesday, Duffy described Taschner as "a

Please see DEPUTY, Page 3



DAVID MENEW

Law enforcement officers wait in line at church to pay their final respects to slain Sheriff's Deputy Lonny Brewer.

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## DEPUTY:

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 madman with a death wish" and called him a loser, comparing him to the film character Rambo.

"From what we know, he was a fantasist—a loser at life in almost every endeavor he attempted, but he succeeded in destroying life and happiness for Lonny Brewer and his wife, Cathy . . . before he played out his Rambo-like fantasy a few hours later and got his death wish," Duffy said.

In his eulogy, Duffy attempted to blunt criticism of the department's SWAT team's tactics and Tashner's death by telling the more than 1,000 law enforcement officers attending the funeral that they "are the few who can hold the line" and offer the only hope for law and order.

### Compared to Spartans

"Not many of our fellow citizens, who are quick to criticize our every move, could ever muster the courage and commitment to do what we do," said Duffy. The sheriff went on to compare the assembled officers to the 300 Spartan warriors, who, according to legend, stopped an invading Persian army at Thermopylae for 10 days, despite being outnumbered 3,000 to 1, before they were annihilated.

Cathy Brewer, who is also a sheriff's deputy, was celebrating her 29th birthday on the day her husband was killed. The couple was married on Nov. 1. Cathy Brewer's father is a retired San Diego Police officer, and Lonny Brewer's father worked as a Police Department mechanic for 17 years.

"She was escorted to the First United Methodist Church in Mission Valley by a uniformed San Diego police officer, who sat with her in a front pew, and accompanied her to the cemetery. Brewer's body lay inside a casket that was draped by a U.S. flag and flanked by a uniformed honor guard comprising five sheriff's deputies.

The 10 a.m. service was delayed by 45 minutes as the hundreds of uniformed police officers and deputies from dozens of jurisdictions walked up to the casket to pay their respects. A long line of officers walked solemnly down the church's center aisle, and each officer saluted the casket. The mourners—about 2,000 in all—included a few hundred civilians and uniformed contingents from the Army, Marine Corps and Navy.

### Moved by Support

"I am moved . . . at the demonstration of comradeship . . . from law enforcement officers from all over this county, the state and beyond," the Rev. George F. Gregg said.

After the funeral, a cortege of hundreds of police vehicles drove

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DAVID McNEW

A grieving Cathy Brewer receives the U.S. flag that covered the coffin of her husband, Lonny,

who was shot to death Saturday. The Brewers, both sheriff's deputies, were married Nov. 1.

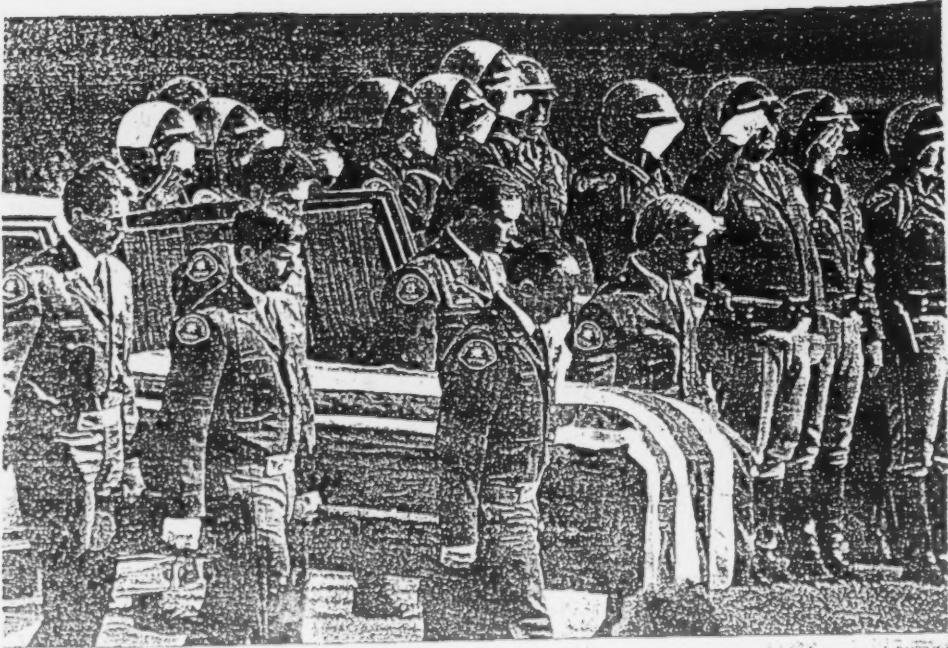
to El Camino Memorial Park in Carroll Canyon, where Brewer was interred. The long procession clogged northbound Interstate 805 and entered the cemetery at a snail's pace.

At the cemetery, a Marine honor

guard fired a 21-gun salute and two buglers played taps. Cathy Brewer, who was sitting by the grave, let out an audible sigh when Duffy presented her the flag that covered her husband's casket. The seven-year sheriff's veteran quickly re-

gained her composure and accepted condolences from many of the officers in attendance.

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Palbearers from the Sheriff's Department carry the coffin of slain Deputy Lonny Brewer as fellow officers salu

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MEMORIAL SERVICE FOR LONNY GENE BREWER

EULOGY DELIVERED BY SHERIFF JOHN DUFFY - DECEMBER 9, 1987 - 10 A.M.

FIRST UNITED METHODIST CHURCH

Reflect with me please.

It's Saturday, December 5th. The Department stores and malls are crowded with shoppers. There are only 20 shopping days until Christmas! A lot of families are together on this warm December day. Some are at the Christmas tree lot, looking for that perfectly shaped evergreen to take home and decorate for this joyous season. Some are busy getting the outdoor Christmas lights strung on their homes and bushes, and setting up the nativity scene on the lawn. Others are dozing in front of the television set, procrastinating on the shopping and decorating. Whatever they're doing, at least they're together on this fine Saturday. It's the holiday season. That time of year when we pause to reflect on the eternal message of hope--"PEACE ON EARTH, GOODWILL TOWARD ALL MEN!" It's a beautiful day, the way San Diego CAN be, a day or two after one of our rare rainstorms. I'm getting ready to attend the Christmas Luncheon for the Retired Deputy Sheriffs' Association, a good day to reminisce and swap stories with men and women, who have been a part of my life for almost 35 years. It's a great day, and Deputy Sheriffs are great people. The phone rings. It's the Communications Center. EVERYTHING CHANGES!

It's Saturday, December 5th. It's Cathy Brewer's birthday. "BREWER!" She only had that name a few weeks, since she married Lonny Gene Brewer. They have been so happy together - whenever they could be together. Today, they won't be Christmas shopping together, looking for a tree together, decorating their home in El Cajon together, or even dozing in front of the T.V. together. As things turn out, they won't ever be doing those things, together.

Cathy and Lonny are both Sheriff's Deputies and both are working today, so that all those other families can have a safe and happy holiday season. Cathy is on duty as a traffic officer in the City of Poway and her husband, who is assigned to the Special Enforcement Detail, was called out early this morning for a S.W.A.T. operation, involving an armed and barricaded suspect in Escondido, who had been shooting at neighbors and was refusing to surrender to police. Both Cathy and Lonny were raised around police families. They expect to work on weekends, holidays, even birthdays. Both of their fathers are former members of the San Diego Police Department. Cathy's father was an officer and Lonny's father was a mechanic who kept the cars in the field. Today, as she goes about her traffic duties, Cathy's happiness in her new marriage and her birthday, is mixed with

LONNY GENE BREWER EULOGY  
PAGE TWO

her concern for Lonny's safety. Even though he's been assigned to SED for 2 1/2 years, is well trained and very deliberate and careful, she can't help but worry. He's been successful on numerous similar operations, but she knows just how dangerous these barricaded suspects can be. She gets a radio call--"call the Communications Center." Her fears are about to become reality.

(LOUDLY!!!!) Today, December 5th (on her birthday), Cathy's newfound happiness and Lonny's life are ENDED! SHATTERED by a single bullet that pierced his upper arm, went through the bone, entered the chest cavity and severed his aorta. A bullet, fired from an AK-47 Assault Rifle, by a mad man with a death wish; one who had terrorized his former wife, terrorized his neighbors and held police officers at bay for almost six hours. (SOFTLY) From what we know, he was a fantasizer--a loser at life in almost every endeavor he attempted, but today, he succeeded. He succeeded in destroying life and happiness for Lonny Brewer, his wife Cathy, and both of their families, before he played out his Rambo-like fantasy a few hours later and got his death wish.

And now, we meet again, as we have too many times in recent years, to mourn the loss of our fallen comrade, to share the grief of his wife and both their families, and to bury our dead! And again, to ask ourselves, WHY? And again to ask our God, WHY? And again, to ask the public we are willing to die for, in order to protect, WHY?

We already know the answer! We have already examined our own SOULS. We have already examined our own COURAGE. And, we have already examined our own COMMITMENT. We did that when we first pinned on our badges, and from time to time, we have repeated that examination of our souls, our courage and our commitment. We know EXACTLY WHY! As escalating violence swirls around us, and threatens to consume the fabric of our society, and seems to overwhelm us, we know that, we are, the few who can hold the line--who can offer any hope for survival of the peace and tranquillity, guaranteed by the laws of our society. Not many, of our fellow citizens, who are quick to criticize our every move, could ever begin to muster the courage and commitment to do, what we DO. We know that, and we know, we will meet like this again, over another fallen officer, mourn the loss, share the grief, and bury our dead. Yes, we will even again ask, WHY? It's part of repeating that examination of our souls, our courage and our commitment. We are indeed, much like the 300 Spartan Warriors, who in 480 B.C., were led by the Lacedaemonian King, Leonidas, in a defense of their homeland, against an entire invading Persian Army. Even though they were outnumbered about 3000 to one, those courageous Spartans held off the invaders for ten days, before the last man fell. The defenders were entombed at the site of their

LONNY GENE BREWER EULOGY  
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last Valiant struggle and these words were inscribed on their tomb--"Go stranger, and tell the Lacedaemonians that we lie here in obedience to their laws." The modern-day peace officer's commitment to the people's laws, even to the ultimate sacrifice, is NO LESS. That's why the same inscription ("Go strangers and tell the Lacedaemonians that we lie here in obedience to their laws") is found in the State Capitol, at the Memorial where California Peace Officers killed in the line of duty have their names inscribed in a large book. That's our commitment to the people's laws. Lonny Gene Brewer knew that, when he hit the door, at that Escondido Apartment. His name will be inscribed in that book and added to a large memorial being constructed West of the Capitol near the Supreme Court Building.

In the years ahead, many citizens, like strangers will pass, will see that name and the December 5, 1987 date. I hope they will wonder, "what was Lonny Gene Brewer, Deputy Sheriff for the County of San Diego, really like?" I'd like to tell you.

Lonny Gene Brewer was born in San Diego on April 16, 1958 at Mercy Hospital to loving parents, Jack and Evelyn Brewer. His father was a garage owner and mechanic at the time, who later worked as a mechanic for the San Diego Police Department for 17 years. As Lonny and his brother, Jay Allen Brewer grew up in the San Diego area, there was plenty of family socializing, with other police department employees (mostly officers) and their families. Camping trips to the desert were a favorite Brewer family pastime and they were usually accompanied by police officers and their families. Lonny was always a well-behaved boy, who never gave his parents any problem. He did well in school and was usually at the top of his class. He graduated from El Capitan High School in Lakeside in 1976, and not surprisingly, he went on to Grossmont College where he received an Associate of Arts Degree in 1979, majoring in Criminal Justice. While attending college, he worked for May Company, K-Mart and three different pest control companies in order to support himself. He also worked part-time for the El Cajon Police Department in their Crime Lab. In 1980, Lonny applied to be a Deputy Sheriff, competed successfully through all the tests, background and interviews, and was appointed by me, on April 18, 1980, two days after his 22nd birthday, as a Deputy Sheriff in and for the County of San Diego. He rated near the top of his class in the Sheriff's Academy and graduated on August 3, 1980. His first assignment was in the Central Jail, followed by a tour in the Vista Jail. On September 24, 1982, Lonny was assigned to the Poway Sheriff's Station as a patrol officer, and on April 26, 1985, ten days after his 27th birthday, he was assigned to the Emergency Services Division, Special Enforcement Detail. On December 5, 1987, on his wife's birthday, Lonny Gene

LONNY GENE BREWER EULOGY  
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Brewer was killed by hostile gunfire during a tactical operation in support of the Escondido Police Department. The phrase "Killed in the Line of Duty," ends his brief but successful career, and his life on this earth. That phrase, however, will give us cause to honor him, and remember him, FOREVER.

More than that, the way he lived his life, will give us cause to admire him. We all enter this life with one guarantee--we will eventually leave this life and all the people we have touched. We have no control of our final destiny. All we can hope to control, is the way we live our lives, and thereby in some small way control the quality of our death. Lonny Gene Brewer, did just that! His colleagues describe him as a man of high principles, full of good faith, and who had a certain "boyish" charm. He was the kind of man that others instantly trusted and liked, because he was so genuine. No phoniness, no falseness, no selfishness or guile in the way he treated others. If he told you something, you simply knew it was the absolute truth!

He started his career at the top of his class in our academy. He maintained excellent physical fitness throughout his brief career, and went about his duties in a very willing, very professional, but very quiet and unassuming way. As a member of a unit that performs dangerous missions most of the time, he was rated as analytical, and a good thinker. Never hasty in judgment or actions. He was always willing to do more than was asked of him, and was always considerate of fellow workers and family. Sometimes that was both at the same time. I've been advised that he was recently interviewing for, and checking on other assignments in the department. There was one he wouldn't apply for. He wouldn't apply for a position in the Training Division because his wife, Cathy, was already on the list and he didn't want to do anything to disrupt her chances. Although they never got to know him, the Sheriff's cadets in our current academy, who are just beginning their careers, have dedicated their class and all their efforts over the next four months, to the memory of Deputy Sheriff Lonny Gene Brewer. That's also part of the time to time examination of our souls, our courage and our commitment--in defense of the people's laws!!

# Did the gunman hear the SWAT strategy?

By David Ogul  
Times-Advocate Staff Writer

**ESCONDIDO** — Seconds before SWAT officers stormed the apartment of a barricaded gunman, Escondido police communicated the impending move over their radios.

Robert Gary Taschner may have been listening in on his police scanner.

When six officers broke through the front door, Taschner sprayed them with bullets from an semiautomatic rifle, killing one deputy and wounding another.

Though no scanner was found — it may have been melted down in a later fire — an officer at the scene said unequivocally that there was a scanner.

"Anyone who says there wasn't is lying to you," he said.

Taschner's ex-wife, Gail, also insists that her husband, an Army veteran with an extensive collection of weapons, had a scanner that he often listened to late into the night.

A police spokesman said investigators have not determined if a scanner was in the apartment during the Dec. 5 siege that last-

"Was it tuned in the Escondido Police Department's frequency? Was he even listening to it if it was? What I'm saying is that it is very possible that there was a scanner there — I don't know. But there is no way we could know what effect that had on the operation."

Lt. Earl Callender, however, said, "If he had one, it could have made all the difference. It is a possibility that he had one, but I have not seen one."

Though members of the SWAT team communicated on a radio frequency that can not be picked up on a police scanner, Escondido police communicated throughout the day on normal channels that can be picked up by anyone.

Just before SWAT made its first attempt to storm the apartment, Sgt. Ken Burkette radioed to the command post that the deputies were about to go in. A communications officer at the post repeated the message to Burkette. The deputies then went in.

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## Inside:

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ed 13 hours and took the lives of sheriff's Deputy Lonny Brewer and Taschner. Two other deputies were wounded.

Escondido police Detective Rick Bass, who is investigating all evidence at the scene, said he believes there was no scanner among the evidence retrieved.

But several items in the apartment were burned beyond recognition in a fire set off by sheriff's Special Enforcement Detail, commonly known as SWAT, when they flushed Taschner out of the apartment in a second assault early Saturday evening.

Lt. Alan Fulmer, a Sheriff's Department spokesman, said that even if Taschner had a scanner, that in itself proves nothing.

"Was it on at the time?" Fulmer said.

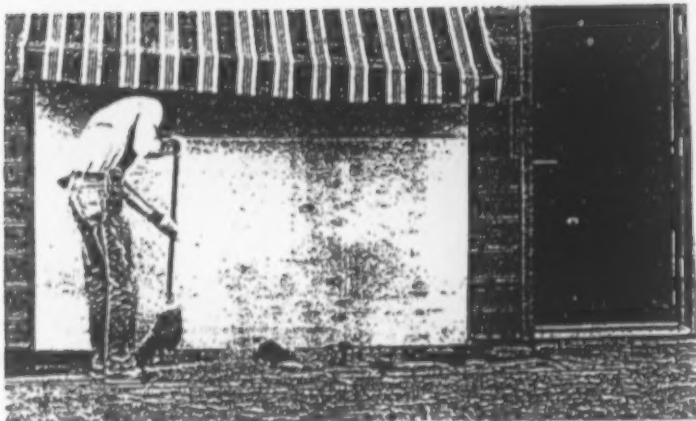


Deputy Lonny Brewer  
Killed in the line of duty.

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Dep. / Shastina





John Heston/The Times Advocate

A maintenance man for the Fairwinds apartments, who declined to give his name, sweeps up.

## Gunman

Continued from page A1

Capt. Mike Stein said police continued using normal communications channels because it does not have the capability to use alternate frequencies — that cannot be picked up by the public — when using portable radios. The department will discuss the possibility of changing their methods of communication at an extensive critique of the siege Friday.

"There are a lot of little things we will have to look at," said Stein, who was in charge of operations for the police department during the siege.

Among the items on the agenda will be communications between the Sheriff's Department and the Police Department. "We had some radio problems," Stein said. "This was only the second time we've taken the command van out in a real incident, and there are some bugs we need to work out."

Callender also wants to determine whether utilities to Taschner's apartment were cut, as is customary during such operations. "Normally, you want to cut utilities so that you can better control the situation."

Police also will be discussing the actions of the press during the siege. Several officers say the media made the job more difficult, particularly during the unsuccessful talks between Taschner and police negotiators.

"The reporters and the photographers got in the way," said one officer.

"Taschner could hear you guys talking, joking, having a good time," said Detective Barry Sweeney, one of two negotiators. "He was asking me what the hell you guys were laughing at."

A bloodbath that could have included members of the media, who sometimes strayed into Taschner's view, may have been averted only because of a malfunction in Taschner's semiautomatic rifle as he fled the apartment.

The Sheriff's Department also will review its conduct during the siege. Its actions have been criticized by a member of the Los Angeles Police Department's SWAT team.

Referring to a SWAT operation in Los Angeles the same weekend in which no one was hurt, Officer George O'Connor said, "We aren't like San Diego. We're being careful."

Officials in Los Angeles, however, said they could not justify such a remark.

"San Diego has one of the finest SWAT teams around," said Lt. Dan Cooke, an LAPD spokesman.

"There's no way you'll get me to second guess anyone's operations. You simply cannot say whether we would have done the same thing in a similar situation, because no two situations are alike."

Cooke said members of the LAPD SWAT team will soon meet with their counterparts in San Diego. "There is something to learn there, and we will take advantage of that."

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# Siege chronology

The following is a chronology of events leading up to the death of a gunman Saturday after a daylong siege in which a sheriff's deputy was killed and two others were wounded.

Robert "Gary" Taschner, 37, a former Escondido groundskeeper who served in the Army for two years, was fatally shot by deputies Saturday evening after he burst out of his East Mission Avenue apartment firing a semiautomatic rifle.

Oct. 17: Police arrested Taschner on suspicion of possessing a loaded firearm in public and being under the influence of a controlled substance believed to be methamphetamine. They seized a .46-caliber submachine gun, a 22-caliber semiautomatic rifle, a 12-gauge shotgun, a high-powered carbine rifle, a Russian AK-47 semiautomatic rifle, nunchakus and knives.

Taschner reportedly was placed in a jail cell reserved for mentally ill patients. Jail officials noted at that time that Taschner was under the care of a doctor and had been treated in the past at the county mental health center.

Oct. 18: Taschner was released from jail in less than 24 hours.

Dec. 1: Police were called to Taschner's apartment after a neighbor reported shots being fired from his home. He was arrested on suspicion of possessing illegal weapons: nunchakus, a billy club and Mace. Police also confiscated a 22-caliber rifle, two black-powder rifles, black-powder handguns, three swords and knives.

Dec. 3: Taschner was released from jail at 10 p.m. on his own recognizance.

Dec. 4, about 5 a.m.: Taschner approached the Jeonmond Dene home of Chesley Ross, who said he was speaking and acting irrationally. Ross called the Sheriff's Department. Taschner, who was on foot, was stopped at 5:30 a.m. near Jeonmond Dene and Quail Road by Deputy Bill Hubler and questioned. The deputy reported that he had no reason to arrest Taschner and said he didn't believe his behavior warranted taking him to the County Mental Health center in San Diego.

10:35 p.m.: Escondido police were called to Taschner's home by a neighbor who reported a gunshot through the wall separating her apartment from Taschner's. Police went to the apartment at 960 E. Mission Ave., but Taschner was not there. They took a report from the neighbor and left.

Dec. 5, 4:15 a.m.: Escondido police received another call from the same neighbor about a gunshot from Taschner's apartment.

Police went to the apartment. They tried unsuccessfully to talk in person to Taschner, who had barricaded himself in his Fairwinds townhouse. Detective Barry Sweeney, who has dealt with Taschner in the past, talked to him by telephone for less than an hour before Taschner unplugged his phone.

6 a.m.: Police evacuated the neighborhood.

6:20 a.m.: They called the Sheriff's Department for help. Before the sheriff's Special Enforcement Detail arrived at 7:20 a.m., Sgt. John Houchin tried to talk with Taschner on and off for two hours from the south side of the apartment complex.

10 a.m.: The Special Enforcement Detail team tried to force Taschner out of his apartment. They threw canisters of tear gas through his window and stormed his apartment. The Special Enforcement Detail team was repelled by a volley of bullets. Deputy Scott Rossali was hit in the lower left leg. A bullet pierced the arm of Deputy Lonny Brewer and struck near his heart.

Deputies did not realize for about 19 to 20 minutes that Brewer was missing. They used what they called a "flash-bang" — big firecrackers and percussion grenades — to divert attention so they could find Brewer, who was lying between some cars in the parking lot, and take him to the hospital.

1:47 p.m.: Deputy Brewer died following two hours of surgery in Palomar Hospital to remove a bullet, which had entered the back of his arm and lodged near his heart severing his aorta.

Starting at 1:05 p.m.: Houchin again tried unsuccessfully to talk Taschner out of the apartment. Negotiations continued off and on for about 3½ hours.

4 p.m.: A sheriff's bomb squad set explosives against the walls of the apartments on both sides of Taschner's.

4:30 p.m.: A San Diego Special Weapons and Tactics team boarded a Victim Rescue Vehicle, a large white tank. The rescue vehicle slowly maneuvered into a driveway in front of Taschner's apartment and deputies threw exploding grenades and tear gas into the apartment.

Minutes later, Taschner, dressed in fatigues and combat boots, burst out of his apartment firing a semiautomatic assault rifle. He ran unchecked for several moments until he was fatally shot. He was pronounced dead at the scene.

— Compiled by Staff Writer Paula Kriner

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# System can't identify walking time bombs

By Robin Slogren

Times-Advocate Staff Writer

James Huberty committed the nation's single worst massacre in July of 1964 when he opened fire in a McDonald's restaurant in San Ysidro. He killed 21 people and injured 19 others before he was fatally wounded.

Last year, Steve Larsen shocked Escondido residents when he walked into his doctor's office and killed him.

In February, San Marcos resident David Sadurday fatally shot his stepson without provocation outside the home they shared.

Last week Robert Gary Taschner killed a sheriff's deputy and wounded two others before he died in hail of police fire.

Although they were of different ages and backgrounds, the four killers had one thing in common. Their mental illness took a violent turn, and they destroyed the lives of innocent people.

It was only after these San Diego County men had done their damage that mental health experts recognized them for what they were: walking time bombs.

The recent tragedy involving Taschner raises questions about whether more could be done to spot and defuse mentally ill people who are on the verge of harming others.

Experts in the criminal justice and the mental health field said this week that the deaths of Taschner and Deputy Lonny Brewer illustrate a host of problems, but they could think of few solutions.

The problems include: a lack of funding for mental health facilities and jails; a society that places little priority on helping the mentally ill; a public that isn't educated enough about mental illness; the unpredictability of human behavior; and the need to protect the rights of individuals.

Larsen and Sadurday had been diagnosed as paranoid schizophrenics, and Taschner's ex-wife says her former husband had the same problem. Huberty had never been examined, but mental health experts who analyzed his actions in retrospect believe he belonged in the same category.

Many schizophrenics never hurt anyone, according to Patrick Stalnaker, a public affairs officer for the county mental health department. "They are no more violent than the regular population," he said.

Schizophrenics can become dangerous, however, if they stop taking their medication and become involved with guns and illegal drugs, he said.

Those interviewed said it is extremely difficult to know which mentally ill people are on the verge of committing a serious crime. In Taschner's case, attorneys, a judge, mental health experts and police said they could find no obvious fault in the warning system.

Although those who knew him well or had worked with him were aware he had mental problems, the police say they did not realize how disturbed he was. The court system hadn't a clue.

Escondido police officers said they knew Taschner was mentally unstable and potentially dangerous.

Lt. Mike Stein said on the night Taschner was killed that police considered him a "dangerous man" because of his past history of using weapons. However, Lt. Earl Callander said this week that Taschner had a minor criminal record, consisting of drug and weapons charges, but had not been branded as mentally ill or dangerous by the Police Department.

Taschner had been arrested twice in the last few months. On Oct. 17, he was arrested on suspicion of possessing methamphetamine, which is a felony, and of having a loaded gun in a vehicle, a misdemeanor. County jail officials noted that Taschner had been treated previously at the county mental health center. He reportedly was placed in a cell for mentally disturbed inmates.

He was back out on the streets within 24 hours. On Dec. 1, he was arrested again on suspicion of possessing unlawful weapons, a felony, and brandishing a weapon, a misdemeanor, after he fired a shot in his apartment.

Callander said that in the last arrest, Taschner did not assault anyone, and he let officers take weapons from his apartment without any resistance.

The officer who arrested him recommended to the jail that Taschner not be released immediately, which usually happens with misdemeanors.

So Taschner stayed in jail long enough to be arraigned before Tony Maino, presiding judge of the Municipal Court, who released him on his own recognizance on Dec. 3. Maino said he doesn't remember Taschner, who was one of 2,000 defendants he saw that week.

After Taschner killed a deputy, some police officers were upset that Taschner had been let out so easily.

Sgt. Rich Hendrickson of the Sheriff's Department said, "Law enforcement in general, and the sheriff in particular, are frustrated about the system as it is operated now. The jails are overcrowded, so they are putting people out on the streets who should remain in jail."

Judge Maino said jail overcrowding is always in the back of his mind. On a typical day, the Vista jail has about 500 people in a facility designed for a maximum of 256.

But in Taschner's case, he said, overcrowding wasn't the major factor. He said he was given no indication that anyone thought the man was dangerous.

The district attorney's office and the judge treated Taschner as a routine misdemeanor case; they say they had no reason to do otherwise.

Maino, who handles many weapons cases, said that if the police "thought he was crazy or dangerous," they should have filed a special form with the court. That form typically asks that bail be increased; in Taschner's case, it would have asked that some bail be set.

Steve Casey, a spokesman for the district attorney,

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ney's office said. Recidivists police also could have asked that the case receive special handling but they did not.

Lt. Callender admits more could have been done but that no one thought it was justified at the time. "The case wasn't serious enough. It was handled at the lowest level" by the officer who arrested Taschner.

The deputy district attorney who reviewed Taschner's case reduced the illegal weapons charge from a felony to a misdemeanor.

"It can go either way," said Casey. "The practice is to issue it as a misdemeanor." It would be charged as a felony only if the weapon was something like a sawed-off shotgun, which would probably be used for criminal purposes, officials said.

Taschner said he was a gun collector, and the types of weapons he had were not uncommon for a collector, those interviewed said.

Terry Allen, an experienced defense attorney who represented Taschner for his arraignment, said he talked to Taschner for about 10 minutes and noticed nothing unusual.

Taschner was coherent and was unhappy about being in jail, which is typical, Allen said.

Deputies at the jail told Allen later that Taschner had not displayed any bizarre behavior while in custody.

"There was no clue that he was unstable," Allen said. "No one told us a damn thing."

Maino said he has the authority to send a defendant to the county mental health department for an evaluation. But he would only do that, he said, if the defense attorney or deputies told him the defendant couldn't cooperate with his attorney or didn't seem to understand the charges.

"There's nothing in the law that says you can keep someone in jail because you think he's nuts," Maino said. "... This isn't Russia."

Police have the right, however, to take people to the county mental health facility in Hillcrest for an evaluation. An individual can be held for 72 hours if it is determined he or she is either homicidal, suicidal or greatly disabled and unable to care for his or her physical comfort.

Stalnaker said the Hillcrest facility evaluates approximately 850 people a month.

After 72 hours in the hospital, a hearing is held. People are released unless it can be shown that they are in imminent danger of hurting themselves or

others.

The day before Taschner had a stand-off with police, he was detained by a deputy. A teacher called police at 5 a.m. to say that a man was acting strangely at her home.

"He was obviously a nut," said Chesley Ross. "He was talking about God and angels and all kinds of weird things."

Deputy Bill Hubler found Taschner walking down the road 30 minutes later and questioned him.

Sgt. Frank Nunez said deputies are trained to ask a person general information and check to see if the individual might be under the influence of drugs.

"We're not reluctant to take someone in, but we're very careful about it," he said.

Hubler told Nunez that Taschner did not act bizarrely. Taschner said his car had broken down, and denied making strange statements to Ross.

Stalnaker said it's very common for the mentally ill to "freak out on the street and then get it together when they talk to police or a judge. There's absolutely nothing you can do about it."

Nunez said he doesn't know what could be done differently, except perhaps to make psychiatric treatment mandatory for mentally ill people who could turn dangerous.

Deputy Public Defender John Jimenez said he doesn't blame law enforcement when the mentally ill become dangerous. He said family members need to be better educated so they will tell mental health professionals when a mentally ill person refuses to take medication properly, like Taschner and Sadurday.

He also said the county mental health department should monitor its patients more carefully. "In many cases, the system is a step behind the problem."

But those interviewed agreed that the county's mental health facilities are overtaxed.

For the past 20 years, Stalnaker said, state officials have pushed the mentally ill out of the state hospitals and into the community clinics to save money. Many are out in the street.

Defense attorney Terry Kolkey said, "It's not a priority in our society to take care of the mentally ill. In my mind, it's short-range economy. In the long run, these people are going to cost society more money if they aren't treated."

Kolkey said his mentally ill clients who have committed serious crimes are likely to get treatment in prison or state hospitals. It is those who have com-

mitted misdemeanors who have trouble getting help.

Stalnaker said, "There are people out there who are sick and not getting treatment. They can't cope, and Boom! Somebody's dead," he said.

He added, "Maybe this is the price we have to pay for a democracy."

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## Taschner's Saga: From Jail

By H.G. REZA, Times Staff Writer

Robert Gary Taschner purchased the rifle that he used in a bloody shoot-out with sheriff's deputies one day after he was released on bail for various gun and drug charges, Escondido police said Tuesday.

Escondido Police Capt. Mike Stein said that Taschner purchased the Norinco Model 845 .223-caliber semiautomatic assault rifle on Dec. 4 at the Escondido Gun Exchange on East Valley Parkway. The next day—two days after he was released from jail—Taschner killed one deputy and wounded two others in a daylong confrontation with Escondido police and a sheriff's SWAT team.

Taschner, 37, was also under the influence of methamphetamine

mines—commonly called speed—when he barricaded himself inside an apartment and exchanged gunfire with police, Stein said. Deputy Coroner Max Murphy confirmed that toxicological tests done during the autopsy revealed traces of the drug, but refused to say how much of the drug Taschner had ingested.

Taschner killed Deputy Lonny Brewer and wounded two others when sheriff's deputies attempted unsuccessfully to storm his apartment. He was eventually killed when he ran out of the burning apartment, firing the rifle from the hip, and was shot several times by a deputy.

Television news tapes also showed a deputy firing his pistol at

point-blank range at Taschner's head as he was held on the ground by other deputies. Escondido police said there was a purpose for the final shot, but have refused to disclose it.

Coroner David Starke said his office is awaiting an autopsy report and declined to speculate on which shot actually killed Taschner.

On Tuesday, Stein said that Taschner, who was a gun enthusiast, purchased the .223-caliber rifle legally. Under California law, there is a 15-day waiting period when a person buys a handgun, while the state attorney general's office checks the buyer's background. However, there is no waiting period when purchasing a rifle or shotgun.

The rifle used by Taschner in the gun battle sells for about \$395 and is made in China.

"There was no way that the people at the Escondido Gun Exchange would know that this person shouldn't have had the rifle. The rifle was purchased legally and there were no laws broken," Stein said.

The manager of the gun store, who identified himself only as Chuck, declined to discuss the sale of the rifle to Taschner.

## to Gun Store to Shoot-Out

"We neither confirm or deny anything about any of our customers," he said. "You'll have to talk to the Escondido police on this because we don't have any comment."

Taschner was arrested Dec. 1 and charged with multiple gun and drug charges. Escondido police said that Taschner was a known drug user and they confiscated an arsenal of weapons when they arrested him. Police said that Taschner posted bail Dec. 3 and purchased the weapon used in the shoot-out on the following day, when the deadly chain of events that ended in a bloody siege began.

On Dec. 4 at 10:30 p.m., Escondido police were called to the apartment complex where Taschner lived when a neighbor reported that he had fired a shot through the wall into her apartment. When police arrived, they found no sign of Taschner.

### Unwilling to Talk

At 4:15 a.m. the next day, police received another call about shots fired at the apartment complex and found Taschner inside his apartment. Police said that Taschner was unwilling to talk to police negotiators and appeared to be on drugs. The sheriff's SWAT unit was called and arrived at the scene about 7:20 a.m.

Sheriff's Sgt. Rich Hendrickson said that deputies believed that Taschner was armed only with a revolver and at 10 a.m. decided to storm the apartment by knocking down the front door. Taschner met the deputies with a burst of rifle fire, sending them in retreat. Brewer, a seven-year Sheriff's Department veteran, died in the gunfire, while Deputies Chuck Wagner and Scott Rossall suffered minor wounds.

Law enforcement officials said 300 shots were fired during the siege, before Taschner was killed about 4:30 p.m.

The sheriff's SWAT unit has come under criticism from several sources, including members of the San Diego Police Department's SWAT team, for storming the apartment. Critics said deputies should have waited and attempted to negotiate with Taschner, since there were no hostages involved.

### Support for Decision

However, Escondido Police Chief Vincent D. Jimno said that he supported the decision to assault Taschner's barricaded apartment.

"The suspect had an extensive commanding view of the surrounding area from his apartment," Jimno said in a statement released by his office. "He maintained the high ground position. Because of his advantageous position, it made it extremely difficult for police to safely isolate the suspect so he could not harm the public and the police staff in the area. The situation itself dictated the decisions that had to be made."

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## Man Wanted in Shooting Gives Up After Chase

By TOM GORMAN,  
Times Staff Writer

Mark Raymond Phelps, wanted by police in the shooting of a San Diego County deputy sheriff Friday night, was cornered and arrested Sunday afternoon in San Marcos after another flurry of gunfire at a deputy who chased him along two North County freeways.

Phelps ran into a crowded furniture store, sending confused employees and customers scampering outside emergency exits, before giving up without a further fight as deputies swarmed to the scene.

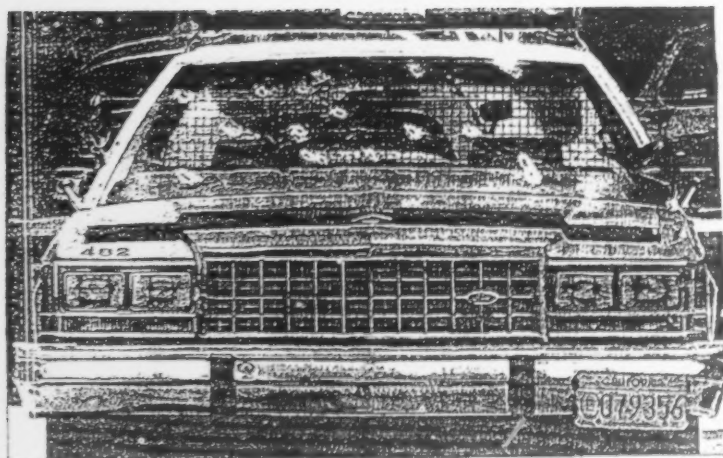
His arrest followed a harrowing chase northbound on Interstate 15 and then westbound on California 78. The pursuit began when Sheriff's Deputy Alfred Mackrille by chance spotted and identified Phelps, 28, as the alleged gunman in the Friday night shooting in Vista. Sheriff's Department spokesman Stephanie Simpson said.

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DON BARTLETT / Los Angeles Times

The bullet-riddled patrol car driven by Deputy James Bennetts when he was wounded Friday.

Shooting suspect Mark Raymond Phelps was arrested in San Marcos Sunday after a chase.

## CHASE: Shooting Suspect Surrenders

Continued from Page 1

As Mackrille gave chase with lights blaring and siren blaring, he updated his progress by radio to other deputies could position themselves on California 78 as the pursuit turned westbound from Escondido into San Marcos.

### Attack on Cruiser

But the suspect abruptly took the North Road off-ramp on San Marcos and drove to the Levitz furniture store parking lot just northwest of the intersection.

"Here, Simpson said, Phelps got out of his car and began shooting at Mackrille, who brought his car to a stop.

"Automatic weapons fire," the deputy shouted into his radio. Moments later, Mackrille identified the weapons as an M-1 and an Uzi submachine gun as units from all over North County reported heading to the scene.

Mackrille was believed to have returned gunfire, Simpson said, but apparently he did not hit Phelps, who then ran inside the furniture store, startling people inside.

Deputies feared Phelps would take hostages inside the store, but he didn't.

"We got a call from an employee at Levitz who said, very calmly,

"We had a guy run in here and he dropped off two guns at a desk and ran towards the back of the store." The employee sounded sort of like, golly, what should we do now?" Simpson said.

A Levitz employee told The Times that Phelps ran into the store, shouting and yelling and waving his guns but otherwise not being violent.

"Everyone knew something was wrong—he was carrying weapons, that was easy to see," said the employee, who asked not to be identified. "Everyone reacted admirably. The employees opened the fire exits and cleared everyone out. The showroom was empty in a matter of a few minutes, and the deputies went in."

"The Sheriff's Department handled it clean, cool and proficiently," the Levitz employee said.

### Suspected of Shooting Officer

Phelps surrendered without further incident, and was taken to the County Jail in Vista for questioning and booking on charges of attempted murder of a peace officer.

A large traffic jam developed at the busy intersection outside the furniture store as deputies and California Highway Patrol officers cordoned off the area to recover

spent shell casings.

Phelps was identified by the Sheriff's Department as the prime suspect in a shooting Friday night that left Deputy James Bennetts, 27, wounded in the shoulder after a brief chase through a rural Vista neighborhood.

Phelps, wanted by authorities on a felony arrest warrant for assault with a deadly weapon, was spotted by Bennetts on Friday night and sped off in his Chevrolet Corvette with the deputy on his tail. He allegedly abruptly stopped and shot at Bennetts with an automatic weapon, peppering the deputy's car with bullets and hitting Bennetts once in the shoulder as he crawled behind his car for cover.

Phelps and a companion, identified by authorities as Michael John Russell, evaded capture on foot Friday night despite a neighborhood search by the sheriff's special tactics squad. Russell, wanted for questioning, is still at large.

An all-points bulletin was issued for Phelps on Saturday, but it was the chance spotting by Mackrille Sunday afternoon on the North County freeway that sparked his capture.

Bennetts, a four-year veteran, was listed in good condition Sunday at Palomar Memorial Hospital.

*Times*  
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## Suspect in wounding of deputy is arrested

By Jim O'Connell  
and Terry Colvin  
Staff Writers

A suspect in the shooting of a sheriff's deputy was arrested outside a store in San Marcos yesterday after a gun battle with police and a wild car chase along State 78.

Mark Raymond Phelps, 27, of Vista, was taken into custody after he fled into the Levitz Furniture warehouse on Nordahl Road and surrendered two guns to a store salesman.

Phelps was being sought in connection with the shooting of sheriff's Deputy James Bennetts, who was

wounded Friday when the occupants of a car he was following opened fire in Vista.

Phelps was spotted yesterday driving a white Camaro west on State 78, approaching Interstate 15 by Deputy Alfred MacKrilie at about 4:23 p.m.

Sheriff's Sgt. Rick Figueroa gave this account of the chase.

MacKrilie, who had spotted the suspect through his rear view mirror, allowed the car to pass him and then followed it.

The car headed onto the northbound Interstate 15 on-ramp and then turned suddenly onto the embankment and back onto westbound

State 78 with MacKrilie in pursuit.

Near the Nordahl Road overpass, Phelps stopped the car on the shoulder of the highway and fired an automatic weapon at MacKrilie, who had pulled onto the center divider.

MacKrilie returned the gunfire and Phelps raced off and drove the wrong way up the Nordahl Road ramp onto westbound 78.

At the top of the ramp, Phelps again shot at the deputy, but MacKrilie, a 16-year veteran of the department, didn't return gunfire because of heavy traffic in the area.

Phelps stopped in the parking lot of the Levitz store on Nordahl Road,

fired more shots at MacKrilie before running into the store, Figueroa said.

Judith Williams of Escobido said she was coming out of a nearby Sizzler Restaurant when both cars pulled up.

"I saw the white car tearing across the parking lot with the deputy sheriff close behind him," she said. "The deputy jumped out and told everybody to get down. Then I heard four or five more shots and saw the gunman run into the furniture store."

Inside the store, Phelps told startled customers and employees that deputies were trying to kill him.

Store manager Robert Eckhoff

said Phelps did not want hostages but was scared that deputies would shoot him. Phelps wanted those inside the store to witness his surrender, Eckhoff said.

"He was screaming at the top of his lungs 'help me, help me, they are going to kill me,'" Eckhoff said.

Phelps offered no resistance when an unidentified salesman took two guns out of his hands, Eckhoff said. A few minutes later, Phelps walked out the front door and surrendered to deputies who had surrounded the building.

See SHOOTING on Page B-2



Mark Raymond Phelps

## Shooting: Suspect is arrested

Continued from B-1  
"He had been on the run for two days and apparently was just ready to give up," Figueroa said.

Phelps was booked into the jail in Vista and will be charged with two counts of attempted murder of a police officer, Figueroa said.

Phelps had several felony warrants pending against him when his red Chevrolet Corvette car was followed by Bennetts Friday.

Near Bautista Avenue and Osborne Street, the Corvette suddenly spun out and came to a stop. As Bennetts emerged from his patrol car, the Corvette's occupants jumped from the vehicle and one of them fired several shots from a .45-caliber automatic weapon before escaping on foot.

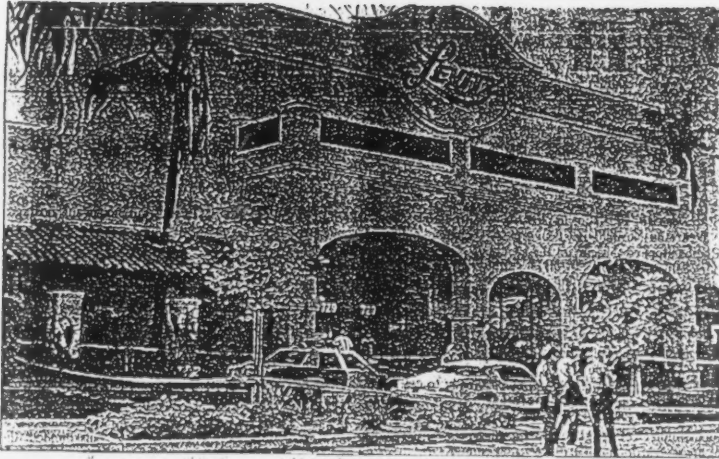
Bennetts was struck in the right shoulder and his patrol car was riddled with bullets. He was listed in good condition yesterday at Palomar Medical Center in Escobido.

Deputies said they were still seeking a second man in connection with Friday's shooting. Michael John Russell, who is in his 20s, was believed to be a passenger in the Corvette when the shots were fired.

The suspect's wife, Pam Phelps, told The San Diego Union she and her husband were attempting to arrange a surrender just before he was spotted by MacKrilie. She said she was in

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*Dep. involved/Shooting*



The San Diego Union/Charlie Newman  
Sheriff's deputies stand guard outside the Mark Raymond Phelps left the white car the  
Levitz Furniture store in San Marcos where was driving and fled inside to surrender.

a separate car in front of her husband on State 78 when the chase began.

Pam Phelps said she had called Carlsbad attorney Thomas Connolly in an effort to arrange the surrender.

Connolly said he had difficulty making the arrangements for Phelps to surrender because he was vacationing in Oxnard, was never able to reach Phelps himself, and the arrangements were difficult to make on weekends.

"It is important that he was making efforts," Connolly said. "But he

was fearful of the system because he's afraid of law enforcement."

Mrs. Phelps said she and her husband were afraid the deputies might hurt or shoot him.

Speaking from her home in Vista where she lives with the couple's three children, aged 2 to 9 years, Pam Phelps maintained her husband "has an anger problem" but is not dangerous.

Phelps was arrested Oct. 23 after firing a high-powered semi-automatic rifle at his wife, the Sheriff's Department said.

Deputies twice have found methamphetamine in Phelps' house but he was not charged because the officers did not have warrants, a spokesman said.

In January, the Vista City Council ordered monthly inspections of his home by the Sheriff's Department and building officials after neighbors repeatedly complained about gunshots, junked vehicles and debris there.

Staff Lisa Petrillo and Tom Hays contributed to this report.

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## Phelps' links with illegal drug lab told

Allegedly showed a federal agent site one day before first shoot-out

By Terry L. Colvin  
and Bill Ott  
Staff Writers

The day before Mark Raymond Phelps wounded a sheriff's deputy in a wild gunbattle in Vista, he had given a federal drug agent a tour of an illegal drug lab, authorities said yesterday.

Phelps, who was captured Sunday following a freeway gun fight with another deputy, was charged in federal court yesterday with conspiracy to manufacture methamphetamine.

U.S. Attorney Peter K. Nunez accused Phelps and another man, Raymond Mike Turnipseed, of meeting with an undercover agent who posed as a supplier of a chemical needed to make the illegal drug.

According to an affidavit, drug agent Frank Fabiano had Phelps and Turnipseed under surveillance for the past three months.

Last Thursday — the day before Phelps is alleged to have wounded Sheriff's Deputy James Bennetts — Phelps and Turnipseed showed Fabiano their drug lab in a garage below Turnipseed's Carlsbad apartment, the affidavit said.

Assistant U.S. Attorney Pat Swan said federal officials probably will not arraign Phelps in federal court until District Attorney Edwin L. Miller decides what state charges will be filed in connection with the shootouts.

Phelps is being held without bail at the Vista Detention Center on two charges of attempted murder of sheriff's deputies. He is to be arraigned there on Wednesday.

Sheriff's officials said more charges may be filed against Phelps, including weapons and drug violations.

Sheriff's spokesman Lt. John Tenwolde said a news conference that Phelps used an Ingram .45-caliber Mac-10 submachine gun and a .223-caliber Mini-14 assault rifle in both shootings.

Bennetts was listed in good condition yesterday at Palomar Memorial Hospital.

Tenwolde revealed that following the Friday night wounding of Bennetts, and prior to Phelps' arrest Sunday, authorities had tried to get Phelps to turn himself in.

"We had been in contact with Phelps' family and his attorney to try and arrange his surrender. Despite those efforts, we heard nothing from the suspect," the lieutenant said.

Based on interviews with the deputies involved in the two incidents and in an effort to clarify previous reports, Tenwolde offered this account.

Shortly after 6 p.m. last Friday, Bennetts, 27, spotted Phelps driving a red Chevrolet Corvette sports car along Santa Fe Avenue near Bobier

See Phelps on Page B-4

## Phelps:

Continued from B-1

Drive in Vista. Bennetts recognized Phelps and knew that there were two felony warrants for his arrest.

Tenwolde said Phelps was wanted for a violation of probation in an assault with a deadly weapon conviction, as well as a jail assault case stemming from an incident at the Vista Detention Center.

"Phelps was a narcotics dealer and he was known to be armed and dangerous," Tenwolde said.

Phelps appeared to be alone in his car. Tenwolde said earlier reports that he was accompanied by another man "appear to be unfounded."

Phelps tried to elude the deputy and a high-speed chase ensued. As he gave chase, Bennetts called for more deputies. He was about 100 yards ahead of the deputy when he drove onto Bautista Avenue and pulled his car around to face Bennetts, who could not see the waiting ambush.

The deputy stopped his patrol car several yards in front of the Corvette. "As soon as Bennetts' feet hit the street, Phelps opened up on him with the machine gun," Tenwolde said.

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*Non Arraigned / Detention*



Tenwoide said investigators have discounted the statements of an 8-year-old girl who said that Bennetts began firing first while Phelps had his hands raised in the air. The youngster also said Phelps was shot in the hand by Bennetts.

"We're certainly not saying she is lying but she was the only one to give us that account while others said Phelps fired at Bennetts as he got out of the car," Tenwoide said. "I would also add that when Phelps was arrested, he had no wounds from the gun battle."

The deputy's vehicle was peppered by more than 20 bullets. Bennetts ducked behind the driver's side door and returned the fire with his handgun. The deputy then ran behind the rear of his car to the passenger side door, seeking better protection from Phelps' large-caliber bullets.

As he peeked out from behind the front of his car, Bennetts was hit in the right shoulder. Tenwoide said the deputy was also struck by a second bullet that did not penetrate his protective vest. Severely wounded, the deputy was unable to use his radio to tell others what had hap-

pened.

Phelps fled on foot into the hilly and heavily wooded neighborhood.

Deputies found Bennetts propped up against the right rear tire of his patrol car, sitting in a pool of blood. Shotgun blasts were fired into the front window of Phelps car but he was already gone.

Phelps did contact one area resident, a woman, and asked her for help. She refused and he disappeared into an open field. A heavily armed sheriff's tactical unit spent the next five hours searching vainly for him.

On Saturday, sheriff's homicide detectives issued bulletins for several cars Phelps might be driving. A statewide alert was also issued for his arrest.

On Sunday at about 4:30 p.m., Deputy Alfred MacKrilie was driving west on Highway 78 east of Interstate 15 when he spotted one of the cars listed on the alert bulletin.

According to the Department of Motor Vehicles, the car was owned by David K. Boyer of San Marcos. Boyer could not be reached for comment yesterday.

MacKrilie dropped behind the 1977 white Chevrolet Camaro and

recognized Phelps.

Phelps accelerated his car and entered the northbound ramp of I-15, then pulled to the right shoulder and doubled back across the freeway embankment. Driving west again on Highway 78, Phelps drove the wrong way onto the Nordahl Road onramp and stopped. He then began shooting at the deputy across two lanes of busy freeway traffic.

MacKrilie pulled his car into the center divider and returned fire with his shotgun. Phelps next drove up the onramp and disappeared from MacKrilie's view. The deputy followed Phelps car only to discover the suspect waiting in ambush at the top of the ramp.

Phelps fired again at MacKrilie, who did not shoot back because of traffic in the area. Phelps sped into the Levitz Furniture parking lot and disappeared with his weapon.

There, according to store officials, he began screaming that the deputies were trying to kill him and he wanted witnesses to help him surrender. Salesman Carroll Balko managed to ease the two guns away from Phelps, who was then ushered outside a back door by store manager Robert Eckhoff and arrested.

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DATE 8-4-87  
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# Deputy recalls Vista shootout during hearing

By Leslie Anne Wolf  
The Vista Press

The first clue Sheriff's Deputy James Bennetts had that he was being shot at was when he felt a peppering sensation on his face.

A moment later Bennetts saw that the driver's side window of his patrol car was gone, realized it was glass he felt hitting his face, and knew that his attempt to arrest Mark Raymond Phelps had turned into a shootout.

The 27-year-old patrol deputy was the first witness to testify in a preliminary hearing for Phelps in Vista Municipal Court Monday. Phelps, 28, is charged with two counts of attempting to murder two different sheriff's deputies and could spend a life term in prison if the District Attorney's office is able to prove its case.

Bennetts testified that he attempted to pull over Phelps' red convertible Corvette in Vista July 31, because he knew the driver had a no-bail felony warrant out for his arrest.

Phelps fled the patrol car, only to come to a sudden stop on Bautista Avenue and open fire, according to testimony. Bennetts said he looked up to see Phelps stretched out in the seat of his Corvette, with the muzzle

of a large submachine gun draped over the trunk, pointed at him.

Bennetts said he fired a single shot from his revolver and ordered Phelps to give himself up, saying, "You won't get away." Bennetts' demand was answered by another blast of automatic fire, he said.

Bennetts said he was able to fire off four rounds in between machine gun blasts, and tried to get around to the passenger's side of his car to take cover when he saw Phelps re-loading his gun.

"I heard my car being hit by fire and I started to get back down," he said. "I felt a solid, blunt hit to the chest."

Bennetts didn't know he had been wounded until he looked over his shoulder to see if help was coming and saw the blood on his uniform. A single bullet had penetrated his bullet-proof vest on the upper righthand side of his chest. Other deputies arrived soon afterward, but Phelps was gone.

Bennetts was taken by Life Flight to Palomar Memorial Hospital, where he underwent surgery. The deputy said he is presently feeling fine, but has regained only 50 percent use of his right arm.

A 15-year-old boy playing in his front yard also witnessed the

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*Dep. Involved/Shooting*

## Phelps

Continued / From Page 1

shootout. Alfred Castellanos, of 2123 Bautista Ave., testified that he and a friend heard the sirens first and moments later saw a Corvette come to a screeching halt in front of the house.

In the courtroom, Castellanos gestured at Phelps, who sat chained to his chair, and said he was the same tall, thin, unkempt man he saw leaning over the back of the Corvette and shooting at a patrol car.

Castellanos and his friend ran into the house and watched the rest of the altercation peeking through the living room curtains. Then, he said, Phelps stopped shooting, jumped out of his convertible, leaped the fence in the front yard and began striding toward the house with

his gun in hand.

The family ran to lock the doors and windows, and Castellanos said Phelps arrived at the back door just as his mother was locking it. Phelps looked frightened, he said, and asked his mother to help him. She said no, just run, Castellanos testified.

Phelps did run away, and was apprehended two days later after a high-speed chase and shootout on Highway 78.

Bennett's partner, Deputy Alfred Mackrille, said he spotted Phelps' white Camaro following him westbound on the highway. Phelps sped past and the deputy gave chase to the Nordahl Road exit in San Marcos. Mackrille said Phelps pulled off and fired several machine-gun rounds

toward him, across two lanes of traffic. "There was no doubt in my mind that he was trying to kill me," Mackrille said.

Phelps finally drove up to a Levitz furniture store, and ran into the building, a gun in each hand, shouting at the top of his lungs. "Help me, they're trying to kill me ... I'm the good guy, you have to help me," according to employees.

Salesman Carroll Lee Balko said Phelps, whom he recognized from newspaper photographs, laid an Uzi sub-machine gun on a counter and again asked for help. "I said, 'I'll help you,' and I reached up and took the M-14 (automatic rifle) out of his hand," said Balko.

Store manager Robert Eckhoff then persuaded Phelps

to walk out the back of the store with him, and promised the panicked man he would not leave his side.

The first deputy on the scene walked around behind Phelps and made him kneel, holding him at gunpoint. The next two to arrive rushed the suspect and forced him to the ground, handcuffing him. Responding to defense attorney John Emerson's query about whether Phelps had been treated roughly, Mackrille said, "Well, I'm sure we weren't real gentle with him."

More than 25 witnesses have been subpoenaed to testify in the hearing, which is expected to last at least a week. Emerson said he intends to show that the deputies fired first in both instances, and Phelps was just shooting in self-defense.

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# Deputy recounts wild chase

By Bill Callahan  
Tribune Staff Writer

Mark Raymond Phelps of Vista led a sheriff's deputy on a wild, gunshot-punctuated chase along the highways and streets of San Marcos last Aug. 2 before he finally surrendered, a Superior Court jury was told yesterday.

Deputy Alfred MacKille, who spearheaded the chase leading to Phelps' capture told jurors that Phelps was so desperate to escape that he drove along a narrow highway shoulder at 70 miles an hour, wove dangerously in and out of traffic and sped the wrong way up a highway off-ramp.

Phelps stopped his vehicle several times to fire dozens of rounds of automatic-weapon fire at the deputy, who returned the barrage with shotgun blasts and rounds from his service revolver, MacKille said.

The deputy gave the testimony before Judge William Mudd in Phelps' trial on two attempted-murder charges involving the wounding of Deputy James Bennetts during a similar chase July 31 and the shots fired at MacKille on Aug. 2.

MacKille said he had just completed a visit with the wounded Bennetts at Palomar Hospital in Escondido and was entering the west-bound lanes of state Route 78 on Aug. 2 when he looked in his rear-view mirror and saw Phelps behind him in a white Camaro.

The witness said he had learned during a briefing that Phelps was the suspect in the shooting of Bennetts 31 on July 31 and was believed to be driving a white Camaro.

The deputy said he maneuvered his patrol car so that Phelps was forced to pass him, allowing pursuit and an attempt at an arrest. When he did so, Phelps took off on his wild ride, periodically stopping to fire at the deputy, the court was told.

The first shots were fired near the Nordahl Road overpass, said MacKille, who said he quickly realized that he was outgunned.

"I lay down in the front seat," he said. "I was expecting the front windshield to get burst like Jimmy's did, and I didn't want to get shot."

MacKille said that his shotgun blasts at his assailant "were almost useless at that distance" and that his handgun shots also appeared ineffective.

He said he was forced to take cover in his

## for Phelps jury

patrol car several other times when Phelps stopped and opened fire again.

MacKille said he maintained his pursuit of Phelps into the parking lot of a furniture store in a commercial area of San Marcos.

Seconds later, several other deputies arrived, and MacKille was notified over police radio that Phelps had surrendered behind the store, he said.

"I went to the back of the building, where another deputy had Phelps in custody, and we then attempted to handcuff him," MacKille said.

"He resisted. He wouldn't relax his arms at first so that we could handcuff him.

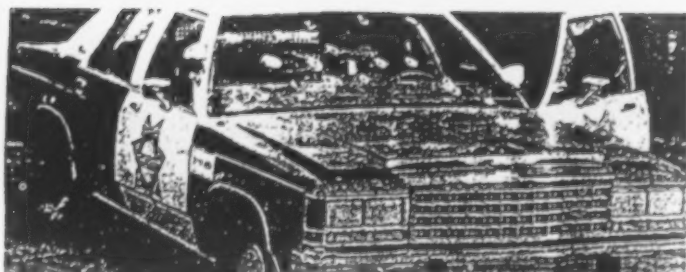
"Then he just went totally limp. He wouldn't do anything, and we had to carry him to the patrol car."

PAPER TRIBUNE

DATE 07-25-88

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Dep. / Shooting



Mark Raymond Phelps was found guilty Thursday of attempted murder after he wounded Deputy James Bennetts July 31, 1987. Bennetts' patrol car, above, was peppered by machine-gun fire by Phelps in the incident.

Press-Counter



Mark Raymond Phelps

## Phelps guilty of attempted murder in wounding deputy

SAN DIEGO (CNS) — Mark Raymond Phelps was found guilty Thursday of attempted murder in the wounding of a sheriff's deputy.

However, Phelps, 28, of Vista, was found innocent of premeditating the machine-gun attack upon Deputy James Bennetts in the July 31, 1987, incident in Vista.

The Superior Court jury will still deliberate Friday the second attempted murder charge, that of shooting at Deputy Alfred MacKrilie on Aug. 2 in San Marcos.

Judge William Mudd set sentencing for April 14 in Vista Superior Court.

Attorneys are barred from commenting on the verdict because of a gag order still in place by Mudd, who issued it last month the day after Phelps' trial started. This is Mudd's first trial as a Superior Court judge, having served previously as a Municipal Court judge.

committed great bodily injury against Bennetts, who was wounded in the shoulder and spent five days in the hospital.

The acquittal of the premeditated attempted murder charge means that Phelps is spared the life term that accompanies the charge.

Phelps could receive nine years in state prison for the attempted murder charge plus three years for the great bodily injury allegation.

The jury began deliberations Monday, but were interrupted several times. Thursday was their first full day of deliberations.

After discussing the case 2½ hours Monday, they requested to hear again testimony from Bennetts, MacKrilie, and three other witnesses. That re-reading of testimony in the record was not finished until Tuesday.

On Wednesday, the jury only deliberated an hour, until the courthouse was closed.

basement. Jurors were sent home out of fear that the water in the building was contaminated, which, it turned out, it was not.

"Your task is not yet done," Mudd told jurors upon recessing for the day Thursday and after reading the partial verdict.

Phelps' attorney, John Emerson, said in closing arguments last week that both deputies fired first and that Phelps fired back in self-defense.

Both deputies denied firing first. In the incident with Bennetts, Phelps was eluding arrest because of two outstanding warrants; Bennetts was about to arrest him.

More than 60 rounds of machine-gun fire hit Bennetts' patrol car, turning it into "a piece of Swiss cheese," said Deputy District Attorney Bill Collins in closing arguments.

Phelps remains in county

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Dep./Sheriff



# Phelps gets life term for gun battles

## Judge denounces him as drug 'poster child'

By Valerie Alvord, Staff Writer

VISTA — Calling him "a perfect poster child for the effects of methamphetamine," a Superior Court judge sentenced Mark Raymond Phelps yesterday to life in prison.

The 25-year-old Vista man, who still faces federal drug and weapons charges, was convicted last month of trying to kill two sheriff's deputies in gun battles last summer.

In the first, last July 31, sheriff's deputy James Bennetts was wounded and his patrol car was riddled with bullets from a MAC-10 submachine gun. The gunfight was witnessed by several children and adults.

Two days later about a dozen motorists were caught in the crossfire when Phelps engaged sheriff's deputy Alfred Mackrille in a Sunday afternoon gunfight at Nordahl Road and State 78.

Yesterday Superior Court Judge William Mudd expressed astonishment that no bystander was hurt, particularly in the second shootout, as he sentenced Phelps to the maximum prison term for each offense. "I'm keeping you off the streets for as long as I can," the judge said.

Mudd lectured the defendant for about 15 minutes, objecting in particular to a statement Phelps made to a probation officer about the American way of life.

Phelps, who faces federal charges of operating a methamphetamine lab in Vista, told senior probation officer John Johnson: "Somehow, I don't feel it's any worse against the law than what, you know, the Kennedys and their families did back during Prohibition.

"And, it used to, I don't know, it used to be a good quality in an American person to have an ambition, a drive and a want to get out ahead, add the guts to stick up and do what it takes ... and I don't know why I'm being messed with by the law for it."

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To that Mudd angrily retorted: "What in the world would society be like if a dope dealer were held up on the same pedestal as the American dream?"

The judge also reacted strongly to Phelps' last words to jury members after they rendered their verdict.

He had contended that the two deputies shot at him first and that he was only defending himself. At the end of his trial, Phelps shouted out that he hoped deputies would someday open fire on each of the jury members.

"That is never going to happen, Mr. Phelps," said Mudd. "And do you know why? Because 99.9 percent of the people who live in this country are not methamphetamine drug-users. They are not methamphetamine drug-sellers ... They are not individuals who maintain no gainful employment (or) who drive around in their cars with MAC-10 submachine guns.

"I have no doubt that you were paranoid, Mr. Phelps, because you are a perfect poster child for the effects of methamphetamine. What happened to you is what happens to a lot of young people —

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*Dep./Shooting*

## Phelps:

only carried to an extreme."

When Phelps attempted to argue with the judge, Mudd cut him off. "You still don't understand, do you?" the judge said. "And that is what makes you such an enormous threat."

He sentenced Phelps to 14 years, the maximum possible for the attempt on the life of deputy Bennetts, which the jury had ruled was not premeditated.

On the second count, related to the attempted shooting of Mackrille, the jury found there was premeditation, and Mudd sentenced Phelps to the maximum of life in prison.

The sentences, Mudd said, will run consecutively.

Phelps still faces drug and weapons charges in Nevada and in federal court.

After the hearing, Bennetts and his wife, Louisa, said they were glad a long ordeal was over. Hit twice in the chest during the July gunfight, Bennetts underwent surgery, and almost died from loss of blood.

The officer "is alive because of a skilled surgeon and the grace of God," the judge told Phelps during the sentencing.



File photo

**Mark Raymond Phelps**

'I'm keeping you off the streets'

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Senator SIMON. Chief William Nolan, of the police department of Homewood, IL. Chief Nolan, we are happy to have you here.

#### STATEMENT OF WILLIAM NOLAN

Mr. NOLAN. Thank you, Senator. As the past president of the Illinois Association of Chiefs of Police, I have the honor of representing that 1,000-member organization. At present, I am also chairman of the Northeast Metropolitan Enforcement Group, which is the narcotics law enforcement agency representing 70 communities in Cook County outside of the city of Chicago.

For the past three decades, I have been a police officer in the field, and also an administrator. During that time, dramatic changes have taken place in law enforcement, as well as in our society.

Thirty years ago, the law allowed us to hold a suspect for 72 hours while we checked out his background to see if he was wanted anywhere in the United States. Now, we can accomplish the same thing in about 30 seconds on computers.

Fingerprint computer indexing and DNA identification of individuals are helping to perfect our investigative abilities. As we become more sophisticated, though, in our endeavors, the criminal element in our society attempts to find ways to outmaneuver law enforcement. We are here today to discuss specifically one of these efforts of the criminal element, which is to outgun the police officers in these United States.

I was a street officer in the 1960's when it was obvious that the first major mistake was made in the sale of assault rifles. The U.S. Government declared surplus most of the M-1's and the carbines that had been used in the Second World War and the Korean conflict.

They sold these weapons to dealers, who then distributed them by the tens of thousands onto our streets. This created the first market for assault semiautomatic weapons. The public's appetite for these weapons continued into the 1970's when the semiautomatic rifles used in Vietnam became available throughout the country. The market had been created.

Now, a large group of weapons are imported every year and sold along with those being manufactured in this country. It is common knowledge that most semiautomatic weapons can easily be converted to automatic weapons by the mere insertion of a selector lever or the alteration of one or two minor parts of a weapon.

In March of this year I appeared at a press conference along with Richard Daley, who has since been elected mayor of Chicago, and Deputy Superintendent Joseph DiLeonardi of the Chicago Police Department, who was representing Superintendent Richard Martin. We all spoke with great emphasis against the proliferation of assault weapons in our country.

During the press conference, DiLeonardi placed two AK-47 rifles on the table in front of all of us. He explained to us that those weapons had just been picked up within the last couple of weeks in crack house raids in Chicago. One of those weapons had been converted already to fully automatic.

As the Federal Government escalates its actions to eliminate the narcotics scourge in our country, the narcotics traffickers are escalating their activities to prevent arrests.

Local law enforcement, which is the backbone of law and order in our country, must bear the heaviest burden in the enforcement effort. Commonsense tells us that these narcotic peddlers and suppliers will escalate their efforts and defensive techniques, including use of heavy armament.

No right-thinking individual could imagine the use of an M-1 rifle or a surplus Army carbine, an AR-15 or an AK-47, being used by true hunting enthusiasts for legitimate hunting purposes. These weapons were meant to be man-killers. Certainly, they could kill an animal, too, but they were not designed for this purpose.

I have spoken with other police professionals throughout the State of Illinois—Chief of Police Ed Hogan of Carbondale, Chief Bill Fitzpatrick of Rockford, Chief Roger Richards of Fairview Heights, Chief Carl Dobbs of Wheaton, IL—and I have heard from many other chiefs throughout the State, all taking a strong stand in opposition to allowing assault weapons to be sold in this country.

During my time on the street when I was a New Orleans police officer, I was involved along with many other officers of that department in five fire fights with members of the radical Black Panther group during the tumultuous 1960's. Each time, we faced heavily armed adversaries who had even then semiautomatic assault rifles available to them.

I was witness to the infamous Howard Johnson's shooting spree where an individual killed almost two dozen innocent people, including the Deputy Superintendent of Police Louis Sirgo, at that time. Because of these experiences I have had, I assure you that I am against the use of these outrageous weapons in our country.

Soon, on the Ellipse here in Washington, there will be erected a beautifully designed monument to the police officers of the United States who have been killed in the line of duty.

I urge you to strongly consider that your actions here in this subcommittee and your recommendations to the Senate will have a powerful impact on how many police officers will die in this country in the future. Do not cause those who have already died to have died in vain, and do your best to spare the lives of future police generations.

Thank you, sir.

Senator SIMON. Thank you very much, Chief Nolan.

Sheriff Clarence Dupnik of Pima County, AZ. We are happy to have you with us, Sheriff.

#### STATEMENT OF CLARENCE DUPNIK

Mr. DUPNIK. Thank you. Mr. Chairman, members of the Judiciary Committee, my name is Clarence Dupnik and I am from Tucson, AZ, where I serve as sheriff of Pima County. I would like to be able to say that I am grateful for this opportunity to testify before you today, but I am not. I am deeply saddened because the prevalence of certain types of criminal activity in the United States mandates some of us in law enforcement leadership to speak out.

Let me preface my remarks by pointing out that I am not an authority on weapons, but I have been a police officer for 31 years. And for several years, I have been Arizona's representative on President Bush's Operation Alliance, the Federal-State effort to stem the flow of narcotics across the Mexican border.

I understand the significant correlation between weapons, particularly the so-called semiautomatic assault weapons, and our devastating drug problem. I am here to testify in support of proposed legislation aimed at resolving the assault weapons problem.

I would like to discuss Senate bill 747, which seeks to protect police officers and the law-abiding public by limiting the usage of specific assault weapons. I have great faith in Senator DeConcini's comprehension of this serious law enforcement situation, having worked with him during his distinguished term as Pima County attorney, and having watched his legislative success in the antidrug area since coming to the U.S. Senate.

I am impressed by Senator DeConcini's reasonableness. In drafting Senate bill 747, he has not sought to take away the constitutional right of Americans to bear arms. Rather, he has sought an effective way to eliminate the unnecessary killing or maiming of police officers nationwide.

To answer an obvious question before you ask it, yes, southern Arizona, with Tucson as the funnel, is a hotbed of narcotics-related crime in 1989. And, yes, semiautomatic assault weapons are playing an ever-increasing role in the crime wave.

According to the Bureau of Alcohol, Tobacco and Firearms for southern Arizona, more than 500 AK-47's have been smuggled into Mexico from the Tucson area in the last year alone. Some have been purchased with drug money, some have been traded for drugs, and most are being used to facilitate more narcotics movement across the border. Believe me, the AK-47 has become the weapon of choice by the Mexican Connection.

In one recent case, the ATF had a search warrant for a house in Tucson. Inside, agents found 37 AK-47's and 300 pounds of marijuana. The ATF informs me there is a direct correlation between smuggling and assault weapons in the majority of cases investigated by that agency.

The commander of our own local multiagency narcotics strike force in Tucson tells me that each time his unit obtains a search warrant in a drug case, it finds some type of assault weapon is involved; that is, every time. The presence of these weapons has become the rule, not the exception.

The Tucson Police Department is well aware of the danger posed by these semiautomatics—ever since one of its officers was the target of 40 rapid-fire rounds from an Uzi less than a year ago. The intimidation factor is considerable.

What would Senator DeConcini's bill do to help fight all this criminal activity? That is another obvious question, and one to which the proposed legislation offers positive answers.

Primarily, the limitation proposal would severely cut the introduction of these weapons into the marketplace. We are talking about assault weapons most often confiscated by the ATF and other law enforcement agencies, not standard weapons commonly enjoyed for sporting purposes.



We are talking about assault weapons originally designed for the military to kill other human beings quickly and efficiently, not weapons manufactured for peaceful civilian pursuits.

Then there is the enhancement provision calling for the mandatory penalty of 5 additional years' imprisonment for using or carrying an assault weapon during or in relation to a violent or drug trafficking crime. That adds an appreciable deterrent feature, in my opinion.

The provisions of this bill that provide for the establishment of a paper trail through Form 4473 are well-intentioned. However, they will present literally thousands of decent, law-abiding gun owners with a dilemma that cannot be resolved. I respectfully suggest that some grandfather amendment be included to make it possible for persons to maintain possession even though a paper trail cannot be established.

Opponents of such gun control legislation argue that the United States already has enough laws on the books with which to fight the criminal element, but they choose to overlook the sad fact that what we have on the books isn't working.

I urge you to give Senate bill 747 a chance. In so doing, I trust that a spirit of compromise can be reached with the National Rifle Association, which has been highly supportive of law enforcement over the years, and which I have steadfastly supported in return. I believe you can deal realistically and fairly with the NRA and still accomplish the basic goals of Senator DeConcini's bill.

In conclusion, permit me to emphasize that I am here today first and foremost because I am concerned about the safety of my officers. I am interested in the protection of these officers and the public. I believe any law enforcement official who does not think of his officers' safety first is not a responsible leader.

I am not naive enough to predict that the DeConcini bill is a panacea. It may not have much effect during the remainder of my career, or even before the year 2000. But it could help our grandchildren and future generations of police officers immensely if Congress has the courage to act on it now.

No doubt, the second amendment is as dear to all of you as it is to me. This new legislation does not infringe on that right. It simply moves us closer to a safer and saner society, and I implore you to support it.

Thank you very much.

Senator SIMON. We thank you, and your appeal to the National Rifle Association to see if we can't work something out is an appeal that I have made. My impression over the years is if the pendulum doesn't swing down to the center, it is going to swing over to the extreme, and everyone ought to be working together to find some sensible legislation.

You have all talked about the people you want to protect in your agencies. Mr. Stokes, you represent the largest police organization in the Nation.

Mr. STOKES. Yes, sir.

Senator SIMON. I think we in Congress have a responsibility. We want you to protect the citizens of this country. I think we also have a responsibility to protect the police of the country.



The ban that the President has made on importation applies to about one-fourth of the weapons; it is a temporary ban. What will you have to do to respond, Mr. Stokes, if you can speak for what you think police organizations, in general, but the other three of you, what you would do specifically in your situations?

What will you have to do to respond if this weapons race keeps on in this country? If I could just go down the list, Sheriff Duffy, I will start with you.

Mr. DUFFY. My response would be that we have an arms race going not only in the criminal element, but also with the police. DEA agents have been issued, I think, MAC-10's, across this country. Police officers are demanding to be armed with equal kinds of weapons, and I don't believe that that is healthy for the public either.

That was occurring in the 1930's with the Al Capones and the Dillingers, and so on, and the police were arming themselves when Congress intervened and did something with machine guns. Unless you do something now, I see an escalation of the police firepower as well. That is not good for our society either.

Senator SIMON. Mr. Stokes.

Mr. STOKES. Mr. Chairman, I concur with what Sheriff Duffy is saying. What I think you are going to see in this country is what we now see in some Third World countries where police officers are walking the streets with machineguns strapped over their shoulder with little regard, when one has to pull the trigger, as to what that ammunition might hit.

We see demonstrations of these weapons generally conducted by people that have a great deal of experience and expertise in the firing of those weapons.

The average citizen who picked up that weapon and tried to fire it in a burst of two and three blasts would probably automatically empty these weapons before he or she could remove their finger from the trigger. The penetration power of these weapons remains a large concern.

Some of the weapons displayed here will penetrate a police officer's vest. We see a demand or escalation among police officers of fire power from what was just a few years ago the standard .38-caliber Smith and Wesson or Colt weapon to 9 mm, to .45 calibers, to what our SWAT units possess. It is absolutely necessary that they be armed with armament comparable to that armament which they encounter.

So, you see these types of weapons already sliding into the police arsenals, the machineguns and the heavy antisniper rifles that are necessary to do our job. And what we are saying to you and to the Congress and to the people of the United States is we do not want to see an armed society that looks like they are incarcerated by the police of this country.

First of all, there are not enough of us. There are approximately 471,000 full-time law enforcement officers throughout 50 States and 240 million people. We need the support of our citizens. That is why we support the idea of law-abiding citizens to keep and bear firearms in their homes; we totally support that.

But I think there is a limit to the domestic arms race. We do not want to see it escalate to what it has become in some Third World countries.

Senator SIMON. Chief Nolan.

Mr. NOLAN. Senator, the arms race is here. May 1 of this year, I just signed a purchase order to buy 9-mm weapons for every officer in my department. Every officer in my department has a bullet-proof vest which has been supplied by the village.

The 35 communities in my area have banded together in order to form an emergency response team to be able to handle the tumultuous situations that are developing in our society now, and it continues on and on.

We are escalating because it is a necessity. We have to protect our officers and we have to protect our community. I don't know when we are going to get the good sense to get together and talk in unison to accomplish what has to be done.

Senator SIMON. Sheriff Dupnik.

Mr. DUPNIK. I think the previous speakers have stated well what is happening in law enforcement across our country. We are responding to the additional threat with more arms. I might point out that the FBI is switching to the Glock 9-mm semiautomatic.

In addition, I think that people, because they feel kind of hopeless, are resorting to local government and to State government to enact legislation which I think would be more appropriately enacted at the national level.

Senator SIMON. One final question from me. Mr. Stokes, you have already indicated you would like stronger legislation than has been proposed. The three of you—and this may be an unfair question, and if you decline to answer, I certainly understand.

If you have had a chance to look at the two bills, do you have a preference in the two bills? We are going to have to make some very concrete decisions. Do you have a preference between the two bills, and are there things—two of you have indicated in your written testimony some changes you would like to see, and we will consider those.

Could you briefly summarize any changes you would like to see in the legislation that is before us?

Mr. DUFFY. Is the question addressed to me, Mr. Chairman?

Senator SIMON. I am going to address it to all four of you.

Mr. DUFFY. Well, the National Sheriffs' Association is on record as supporting Senator Metzenbaum's legislation before it was amended, and I assume this proposed draft substitute—has this been enacted, or introduced already?

Senator METZENBAUM. Yes, that is the bill that is before us.

Mr. DUFFY. We are in support of that. We believe that the list of weapons that is described in the legislation, the expanded list, is appropriate. It, as a matter of fact, came from a steering committee which the National Sheriffs' Association participates in.

The only change that we would like to see, frankly, in that is to reduce the magazine capacity to 5 or 10. We can't find a State anywhere in the United States where they allow more than five rounds in a magazine to hunt with.

So, if sportsmen really want these for hunting weapons, there is no reason in the world why they have to have more than 5 rounds,

or even 10, I suppose, would be a compromise between 5 and 20. Twenty rounds is too many, in our view.

I suppose something is better than nothing, and every piece of legislation has something that you would like to pick at. But I think it would be our hope that Senators DeConcini and Metzenbaum would be able to work together.

I certainly offer the services of the National Sheriffs' Association to participate with both Senators to try to come to some compromise legislation. We aren't going to compromise everything, obviously, and we are going to have to make some hard choices.

Senator SIMON. Thank you.

Mr. Stokes.

Mr. STOKES. Mr. Chairman, the 25 weapons that are contained in Senator Metzenbaum's bill—you know, we totally support those. BATF has a list of 35 to 40 weapons which they have also said should be banned. We would like to see a merger of those lists.

As Sheriff Duffy said, we serve on the National Law Enforcement Steering Committee. We have put together a legislative proposal for the control of assault weapons which includes a list of 45 specific weapons.

Our legislative proposal recognizes the fact that imports only account for 25 percent of the assault weapons in this country. The issue of the domestic manufacture of banned imports must receive attention. When BATF went after the Striker, all of a sudden cops faced a domestic knock-off called the Street Sweeper. We recognize this problem and strongly support legislation to remedy it.

Tax registration for the information gathered on these semiautomatic assault weapons should be maintained in a central system so that we can trace those weapons that are either stolen or used by the criminal in the perpetration of their criminal acts.

BATF lists a large number of temporarily banned guns. Senator Metzenbaum's revised bill recommends some additional weapons. We would like to see, at the very least, legislation which merges these two lists and attempts to deal with banned weapons domestically produced under another name.

It is also important that someone in Government have the ability to review these types of weapons on an immediate basis. Our proposal and many other bills suggest the Treasury Secretary. Senator Metzenbaum and Senator DeConcini have moved in the right direction.

So, we would like to see those areas of the legislation—or some amendments made in the legislation to combine those to make it traceable. That helps the working police officer on the street when he or she has to trace these types of weapons. Right now, without a paper trail, our ability to proceed is halted.

Senator SIMON. Chief Nolan.

Mr. NOLAN. The Illinois chiefs have found intelligent merit in both bills, and we find a great intention and direction through both bills. However, we have found more ready support for the Metzenbaum bill.

We believe that the Metzenbaum bill can be even strengthened further by restoring some of the earlier provisions of the bill, including the registration requirements for both existing and future semiautomatic assault weapons.

We urge limitation of rounds per magazine from 20 to 5. Just as Sheriff Duffy had said, if you can't kill it in five rounds, shame on you; you don't belong being a hunter anyway. We also recommend that the Secretary of the Treasury perhaps be given more permanent rather than emergency authority in adding additional weapons into the list, and that should be given strong consideration.

We find that something must be done, and soon. Our police officers can no longer tolerate this situation on the street.

Senator SIMON. Thank you.

Sheriff Dupnik.

Mr. DUPNIK. As I said, I am not an authority, but we have to find a way to identify every single similar type weapon that we are talking about or I don't think we will really accomplish what we are trying to accomplish. If we leave loopholes, the loopholes will multiply overnight.

As I pointed out in my presentation, this Form 4473—what is going to happen is, literally, you have tens of thousands of semi-automatic assault weapons out on the street today that people simply can't trace that were legitimately obtained by legitimate gun owners—people that they bought them from at a swap meet, traded with a friend, purchased at a business that went out of business 10 years ago.

My own judgment is that many of those people, if they can't comply with the terms of this legislation, are simply going to disobey, and ultimately we will have more confrontations between legitimate, previously law-abiding people and the police. And I strongly urge that we need to come to some reasonable resolution of that particular issue.

Senator SIMON. Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

Gentlemen, I join in thanking you for coming today, and I fully understand the problems you face in law enforcement, having been in the field a long time myself. There are two weapons on the table, the fourth and fifth ones in, which, I am told, were placed there to show nonassault type weapons. The fifth one is a semi-automatic hunting rifle, and my question is, do you think that there ought to be a ban on a semiautomatic hunting rifle? I will start with you, Mr. Stokes.

Mr. STOKES. Absolutely not.

Mr. DUFFY. No.

Mr. NOLAN. No.

Senator SPECTER. Sheriff Dupnik?

Mr. DUPNIK. No, sir.

Senator SPECTER. The question then arises as to how we define a difference between a semiautomatic hunting rifle and, say, the AK-47, which is also on the table. That is what we have been struggling with.

Would any of you gentlemen be able to help us on that kind of a definition? Mr. Stokes.

Mr. STOKES. I think the simplistic answer to it is, as has been attempted in several bills, to clearly define which weapons you are outlawing, perhaps even a picture of the weapon, if necessary, to help for the interpretation, and then allow the Secretary of the



Treasury the ability to prohibit or stop the duplication of, say, a Street Sweeper from a Striker.

It is the same thing we had with the Bushmen a year or so ago, the same type of deal where we would have someone monitoring, watching, and then making a decision temporarily that had to be confirmed by the Congress of the United States. This seems to be a step in the right direction and a fair method of determining those weapons.

And I would invite, as you have said, the NRA's input into that process, as well as the law enforcement community and the Steering Committee.

Senator SPECTER. Yes, Sheriff Duffy.

Mr. DUFFY. Senator Specter, we wrestled with that problem in the State of California. As you may know, there is some legislation that—well, it is just getting very close now in our State.

Senator SPECTER. What has happened there? It passed the State Senate. Has it been signed by the Governor?

Mr. DUFFY. Well, the Governor and Senator Roberti have reached agreement with some modifications there, about two or three. I think they are reported in this morning's Washington Post.

But it started out with trying to define the difference. I don't know anyone in law enforcement who wants to outlaw or even try to regulate semiautomatic sporting rifles. It is indeed a difficult task to come up with a definition that doesn't do that and, at the same time, would regulate the others.

We tried in the State Sheriffs' Association, were unable to do it, and I would agree with Mr. Stokes that you probably have to follow the same path that the California Legislature did in coming up with a list of weapons that are included, which I believe is the easiest, or, in the alternative, a list of weapons that are excluded; that is, not covered. I think the former is easier.

Senator SPECTER. Well, the question—go ahead, Chief Nolan.

Mr. NOLAN. I was just going to say that in research, House bill 1190 contains a factoring definition, and perhaps that could be considered. There are certain things about—

Senator SPECTER. A factoring definition?

Mr. NOLAN. A factoring definition, yes.

Senator SPECTER. Would you amplify on the meaning of that?

Mr. NOLAN. The assault weapons seem to have some very common elements in them which are not contained in true hunting rifles, such as, well, on a hunting rifle the stock is extended in order to give more accuracy for the single individual shot. The hunting rifle does not contain a bayonet stud.

The cooling mechanism, or sleeve, that often is on a rapid-fire weapon is not something that is common to a hunting rifle. As you can see, there are shortened stocks on all of these assault weapons because they are meant to be fired under arm as well as on the shoulder.

There are other things, which are the large magazines. Again, we are recommending 5-shot magazines instead of the 20-shot magazines. The basic construction of the weapon is meant to be rapid-fire, and so forth. I am sure there are many other elements that could probably be emphasized, too, which make these man-killer weapons, not deer-killing.



Senator SPECTER. Chief Nolan, may I pick up on the point on rapid-fire? Is there anything to stop weapon number five on the list there, which everybody agrees on this panel ought not to be banned, from firing just as rapidly as the AK-47?

Mr. NOLAN. I would suspect that the construction of the weapon would, in all probability, not be conducive to that, as rapid fire, or conversion to full automatic, where the military weapons are designed to be converted from semiautomatic to automatic. They are designed with those mechanisms in it, usually for a selector switch, so it is very easy to convert them.

The hunting rifle is usually a bit more—and I have to be frank with you. I don't ever recall running across a hunting rifle that had been converted to full automatic, never in my career.

Senator SPECTER. Sheriff Duffy.

Mr. DUFFY. I think one of the helpful things might be to look at the magazine capacity, which is one of the reasons why we feel that five rounds is really enough. If you are going to go deer hunting, five rounds in a magazine is four more than Senator Goldwater felt you needed.

If you do that, regulate the magazine capacity, there is one more difficulty with that they found in California. It was capable—the word “capable” was bothering a lot of—capable of receiving a larger magazine. So, there would have to be some change.

You can't do it without regulating the magazines themselves, as Senator Metzenbaum's bill does. We would just like to see it smaller. If you had five rounds and it was written in the law, you would not include those.

Senator SPECTER. Sheriff Duffy, are you suggesting that if you limited the number of rounds in a magazine that it would solve the problem?

Mr. DUFFY. I don't know that it would solve the problem, but it certainly addresses the question that you asked. The difference between this AK-47 and the hunting rifle is the number of rounds that can be fired rapidly; not how fast they fire, but the number of rounds that can be fired in a clip.

Senator SPECTER. So, if you deal with the AK-47 and you had a limitation of five rounds in a cartridge—

Mr. DUFFY. In the magazine.

Senator SPECTER [continuing]. In the magazine, would that accommodate the major portion of the problem which you have addressed here today?

Mr. DUFFY. I believe so.

Senator SPECTER. Well, the concern that I have, Chief Nolan, coming back to you, the experts with whom I have consulted say that if you take the semiautomatic hunting rifle, it is substantially different cosmetically on the items that you have identified. The attack rifle looks like a military weapon and it has a very bad appearance—the bayonet business and the rest of it. But, mechanically, the semiautomatic rifle is very close to, if not identical with, the attack weapon, so that if you have a semiautomatic and you have a 60-round clip, there can be the same kind of impact there.

Mr. NOLAN. I guess my only response to that would be law enforcement has not had the experience of seeing that occur. And if it is, in fact, capable of occurring, why hasn't it?

Senator SPECTER. Well, it may be that the kinds of people, the kinds of nuts who use the—the man in Stockton, CA, who is deranged, chooses the AK-47 because it has the appearance that he is looking for. However, when we try to structure a law—and I know you appreciate this fully—we are trying to structure a law which takes care of the mechanism.

Would you concur with what Sheriff Duffy says? And I address this question to Mr. Stokes and Sheriff Dupnik as well. As you describe the horrors of law enforcement's problems—and I have seen them in a lot of cases myself as a district attorney—would you think that the magazine that holds five rounds or whatever low number might address the problem?

Mr. NOLAN. It addresses the problem. It does not solve the problem. I don't know of any reasonable, logical way that you can solve the problem, but we must address the problem as best as possible, and I think that is a good way to address the problem.

Senator SPECTER. Well, I am trying to use a word which is realistic. If you have semiautomatic hunting rifles, you don't solve the problem. If you have a lethal weapon, you don't solve it in that sense.

But would you concur, Mr. Stokes?

Mr. STOKES. No; I have some reservations. How do you control the sales of the magazines? We have to get rid of all of those magazines, I guess, and draw those in. There is no tracing ability on those weapons, and then it would be mere possession.

We would be in a position where we are reacting to a crime instead of trying to prevent a crime. I do not understand why anyone needs a Street Sweeper or an AK-47 to hunt with. I have never heard anybody say that they use those types of guns to hunt with. I have had an argument that someone might use them to shoot ground hogs with, but, they are antipersonnel weapons.

These two shotguns were designed for the American sportsman to go into the field to enjoy, if that is their joy, to shoot quail, to shoot pheasant, the rabbits, the deer, and make a sport of it. I see no sporting value to an AK-47 or a Street Sweeper on our streets or in our society.

I have a concern about just limiting magazine size. I think it is something that Congress ought to be looking at. If that answers the question or would resolve the problem, certainly I would be in favor of it. My concern is the protection and the rapid fire, the ability for conversion, weapons that come already screwed for a silencer, as well as the bayonets and some of the other items that are here—the easily concealable weapons.

Senator SPECTER. You raise a great many points and I don't want to pursue this at any greater length because we have many witnesses and many haven't questioned. I would just focus in on one aspect of your testimony, and that is the aspect that you raised, the point about how do you deal with all of the clips which are out there and the existing mechanisms which hold more rounds.

I don't know how we deal with that, and we have to wrestle with that. But as Sheriff Duffy and Chief Nolan have said, if you had a 5 limitation, if you can find some way—or I don't know that 5 is the magic number; I don't know what the magic number is, but less than 60, some number.

My question would be if we can find a way to deal with it in terms of all those that are out there, would you concur with the generalizations that Chief Nolan and Sheriff Duffy have made about addressing the problem in a significant or realistic way?

Mr. STOKES. Yes, sir. If you would put that in there and maintain the 10-year penalty contained in the bill, and that we will swiftly and judiciously deal with those individuals, not plea-bargain it down, then, yes, that may serve the purpose.

I make a comparison when I speak on these issues. There isn't a person in this room that likes to pay their Federal income tax, but they do so because they know if they don't, the IRS is going to swoop down on them and they are going to pay, and pay a penalty and go to jail as sure as I am sitting here. But that is not true with firearms.

Senator SPECTER. Well, we haven't gotten into the enforcement aspect, but when I was DA, I abolished plea bargaining in Philadelphia, which was a very tough item on our docket, and led the fight in 1972 as a member of the National Commission on Criminal Justice Standards and Goals to eliminate plea bargaining totally in this country, and fought for the longer sentences.

When you talk about suspects like Mark Phelps and you talk about commutation of a cop killer by a governor of a big State, those things are just abominable. There is a lot we have to do, but we are trying now to just have a narrow focus and see what we do with the current problem.

Mr. STOKES. As I said in the testimony, Senator, I think that the legislation of Senator Metzenbaum is a step in the right direction and brings to light a serious issue facing us in law enforcement and its citizens.

Mr. DUFFY. Could I make a final emphasis on the magazine capacity?

Senator SIMON. OK, and then we are going to have to move on.

Mr. DUFFY. Yes, sir. I just believe that the magazine capacity is the key to try to make the difference between the two. All the other things are just as important, but if you had one of those hunting rifles with a 20-round magazine, which is not normal—you are not going to be able to find one unless somebody manufactures one for them, and they could—then the 20 rounds is just as much danger to my deputies as this AK-47.

Senator SPECTER. Thank you very much.

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. In order that we clarify the situation, we know there are thousands of large magazines that are out there now. Absent our confiscating all of those, which I do not advocate, the question, I think, raised by Senator Specter is can we solve this problem by legislation that only deals with the size of the magazines.

Sheriff?

Mr. DUFFY. No, sir.

Senator METZENBAUM. Mr. Stokes?

Mr. STOKES. No, sir, I don't think so.

Mr. NOLAN. No, sir; it has to be much more complete than that.

Senator METZENBAUM. Sheriff Dupnik?

Mr. DUPNIK. No, sir.

Senator METZENBAUM. Thank you very much. Now, let me say to you, Dewey, that the question of adding additional weapons to the list is a matter with which I am comfortable, and I will explore that with the law enforcement groups. I have no problem with that at all.

And let me say to Sheriff Duffy, who is representing the National Sheriffs' Association, and to Sheriff Dupnik, who I understand speaks for himself, not as a representative of the sheriffs, I am particularly pleased to have you here today, and I certainly am very pleased to have Chief Nolan with us, speaking for the Illinois law enforcement groups.

I know that the NSA has not always supported firearms legislation, but you are out front early on the assault weapons issue, and I think that indicates the gravity of the problem.

Now, as we all know, the Bush administration chose not to testify here today, and I would just like to inquire of you, Sheriff Duffy, Mr. Stokes, Chief Nolan, and Sheriff Dupnik, has there been any effort on the part of the law enforcement groups to meet with the President, Secretary Bennett, or other members of the administration to discuss your views on assault weapons, and if there has been such an effort, what was the result?

Mr. DUFFY. Yes, there has been some result. I am the immediate past president, also, of the Police Executive Research Forum, and still active in that organization as well as the National Sheriffs'. We have made attempts to get meetings arranged with the administration on this subject.

I have actually been able to meet with the Attorney General, Mr. Thornburgh, about this subject. He has expressed some support, without coming out and supporting your particular bill, or at least some concern on behalf of the things that we described here today—the threat to law enforcement officers.

The staff of NSA was attempting to arrange a meeting with me and Mr. Sununu, the Chief of Staff, this afternoon, but we haven't been able to set that up yet. We are still trying.

And I might add, Senator, that all the sheriffs are elected. We get the same kinds of pressures that Members of Congress and Senators get from the NRA, and that should not go unnoticed.

We are willing to work with the Congress and the U.S. Senate to get something meaningful. We may not be able to solve it all. The number of weapons that Senator DeConcini has—that is better than nothing. The ones that you have is better still, and the ones that he suggests is better still, but we need something this year.

Senator METZENBAUM. I would go down the line on this. Do you support a waiting period for a background check prior to a transfer of an assault weapon?

Mr. DUFFY. Yes, but I suppose you could say we worry about the costs of that, and we would prefer the Federal Government to reimburse us or pay for it or do it themselves in some manner. But I will certainly be willing to do as many background checks as I have to do in San Diego County in order to get this legislation, and I will absorb the cost of it.

Senator METZENBAUM. Dewey?



Mr. STOKES. Yes, and I think that the costs could be absorbed and paid to the Federal Government and reimbursed to the law enforcement agencies for that under a proposal for funding.

But on your question of have we met, yes, and that was the Attorney General, Mr. Thornburgh. I have met with representatives of the President's staff and, yesterday, met with the President himself. Gun legislation and drugs were the topics of that discussion with myself and about 17 other members of the law enforcement community.

The President is aware of our concern over this legislation, and over drugs, and we understand that something has to be done. I hope that he will make the BATF list at least permanent and consider some way to filter out the duplication of these weapons.

Senator METZENBAUM. Thank you.

Chief Nolan.

Mr. NOLAN. As far as the waiting period for a transfer of semi-automatic weapons, I would definitely support that. The other question, the first question that you brought up, that would be a matter for the International Association of Chiefs of Police and I do not feel in a position to be able to make a statement in regard to that.

Senator METZENBAUM. Thank you.

Sheriff Dupnik, as I understand it, you oppose the waiting period for transfer of assault weapons.

Mr. DUPNIK. Senator Metzenbaum, I just don't think that 2 weeks is a long enough time to do a thorough background investigation. I don't think that it is possible, even in thorough background investigations, to be able to predict who is going to use them illegally and who is not.

Second of all, the people that won't be able to qualify will get them through other means, as well, and Stockton, CA, I think, is a perfect example of how those systems don't work.

Senator METZENBAUM. I want to be certain I understand you. Do you think that the period ought to be longer than 2 weeks or do you think that the whole waiting period concept isn't advisable?

Mr. DUPNIK. I just don't think it is practical.

Senator METZENBAUM. Going down the line again, do you support the Secretary's authority to issue an emergency order for up to 1 year with respect to adding new weapons that aren't on the list and, during that year, Congress having an opportunity to act? Absent Congress acting at the end of 1 year, the gun would be permissible, and if Congress acted one way or the other, the ban would expire at the conclusion of that action.

Mr. DUFFY. I think that is imperative. It only makes sense. I believe that Congress is the only one who should be able to legislate the legality or illegality, but there needs to be some ability to take emergency action and it is appropriately placed in that legislation, I believe.

Senator METZENBAUM. Dewey.

Mr. STOKES. I think predicated upon history, I think it is absolutely necessary.

Senator METZENBAUM. Chief Nolan.

Mr. NOLAN. I think this is the minimum that we should do and I fully support it. However, I think that just like everything else in



our law enforcement field, once we take a step in one direction to balance out the problem so that law enforcement now has a better grip on it, the bad guys will come up and find another way to get around it. I think that the Secretary, perhaps, should have even more power to be able to do more in an immediate situation.

Senator METZENBAUM. Thank you.

Sheriff Dupnik.

Mr. DUPNIK. I think Sheriff Duffy articulates the position well and I agree with him.

Senator METZENBAUM. I want to thank all of you for being here today. When we are discussing legislation of this kind, I make no bones about it—I am not an authority, I don't know much about it. You people live with this problem daily and you see things that the rest of us don't see in our daily operations.

So, I must tell you that it has been a real privilege to work with you in the past. I am looking forward to continuing to work with you to fashion a piece of legislation that will protect your members and protect the people of this country, but your members have a special kind of protection to which they are entitled because you are out there every day on the line protecting us.

Thank you very much.

Mr. DUFFY. Thank you.

Mr. STOKES. Thank you, Senator.

Senator SIMON. Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you.

Gentlemen, I want to thank you for being here, too, and the long effort that you have given not only on this subject matter, but in the omnibus drug bill last year, you all played an important role in seeing that passed. If we could now just find the money to complete appropriations, we would have a jackpot.

But let me ask you this: The argument that you hear about both these bills before us, particularly from the NRA and other second amendment organizations, is that if you ban these guns the criminals are still going to get some guns. They are still going to get them illegally because they got them illegally in the first place. What are you really solving? How are you going to stop that guy with the MAC-10 from not having some semiautomatic weapon to shoot your officer?

How would you respond to that argument?

Mr. DUFFY. Well, in San Diego County, we seize hundreds of these weapons every year. The ones that the DEA seized were a small percentage of those weapons seized in San Diego County.

Obviously, many times, when you seize the weapons, they are not being used against the officers, and that is the time we need to take the action when we seize them, prior to the time that these tragic incidents occur, such as occurred with the deputy who was shot that you saw here, the one who was killed with the AK-47, the one that could have very well been the same kind of thing with another AK-47.

Had we been able to catch that guy, for example, in the first example I gave with that AK-47 fully loaded, and given the kind of penalty this legislation calls for, we might have avoided a tragedy.

Senator DECONCINI. Mr. Stokes.

Mr. STOKES. The weapons, I guess, that we encounter and see go from semiautomatic to the fully automatic. If we don't send a swift, determinate message to the criminal element by outlawing them or at least putting an additional obstacle in their way—a DOJ study showed that 26 to 28 percent of the criminals went in and bought their guns legally—then police will continue to be victims.

We brought before this committee one of our captains from South Carolina who testified about a prisoner who was out with a driver's license, walked into a store and bought two weapons on two separate occasions. We have to impede those individuals, and we believe that this is another obstacle and another manner to impede that criminal element.

And in addition to that, when he or she is caught, then they have an additional—

Senator DECONCINI. Additional penalty.

Mr. STOKES. Additional penalty to plug into.

Senator DECONCINI. That is a good point. I will get to you in just a minute, Mr. Nolan, but in that area, if you find someone who is not already a felon and has one of these guns that would be banned under either bill, then you have got a charge against him.

Mr. DUFFY. Then we make him a felon.

Senator DECONCINI. Yes, then you make him a felon.

Mr. STOKES. And then what if you go in on a raid or a search warrant that is not directly related and you see these weapons?

Senator DECONCINI. Then you can arrest just for that purpose.

Mr. STOKES. Then you could have a reason to confiscate those weapons and destroy them, and I would think that the gun manufacturers would applaud you on that because then they make more.

Senator DECONCINI. So, it is another tool for both the prosecutor and the police officer in the arrest process.

Mr. Nolan, how do you answer that argument that the second amendment advocates rely on?

Mr. NOLAN. The solution has to begin somewhere, and it may be that the horse is out of the barn and the magazines are out there, the weapons are out there. However, let us close the barn before we lose the whole herd. Put another obstacle in the way of the criminal element, the ones that want to cause problems in our society, the ones that plague our society. This is another tool; this is another way of working at them and getting at them, and getting at them to protect our society and our police officers.

Senator DECONCINI. Sheriff Dupnik.

Mr. DUPNIK. We are not going to solve this problem with this bill today, but 20 years from now, 30 years from now, I think there is going to be a significant impact with semiautomatic weapons.

But I think there is another issue that requires that we should consider this bill favorably, and that is the issue with guns leaving this country going to other countries. You know, we get criticized by Mexico for using the narcotics which they send us, and I think they make the same argument in reverse with us on weapons.

This country has an insatiable appetite for automatic assault weapons, semiautomatic assault weapons, and by the thousands, the tens of thousands, they go to Mexico and they go to Central America and South America because of our liberal policy on the

importation of these weapons. And I think we at least owe it to those countries to try to slow it down.

Senator DECONCINI. Mr. Stokes, the administration or the President took a very bold step in banning almost a million weapons that could come into this country, and I applaud him for that, although I get a feeling from talking to him and the Secretary of the Treasury that this is only temporary while they do a survey.

Are you familiar with the survey that the Treasury Department is involved in, and is law enforcement participating in that survey?

Mr. STOKES. We have written and asked that we be involved in that survey and, to my knowledge, the rank-and-file police organizations have not been involved in it.

Senator DECONCINI. That is my understanding, too, but I want it on the record.

Mr. STOKES. We have not been involved in it, and I have nothing against the administrators and chiefs and sheriffs, but, you know, it is high time we listened to the guy out on the street.

Senator DECONCINI. Well, that is my question. Are the sheriffs involved in that survey?

Mr. DUFFY. No, sir.

Senator DECONCINI. I didn't think they were either.

Mr. DUFFY. As far as I know, neither the Police Executive Research Forum nor the National Sheriff's Association have been yet asked.

Senator DECONCINI. You haven't received anything?

Mr. DUFFY. That is not to say they wouldn't be sometime.

Senator DECONCINI. Mr. Nolan?

Mr. NOLAN. I don't know of any.

Senator DECONCINI. I don't either, because what I gather it is going to sports groups, which is just fine, but I think the survey ought to include groups such as law enforcement.

My last question: Are any of you hunters?

Mr. DUFFY. Yes, I am.

Senator DECONCINI. You are a hunter?

Mr. DUFFY. Yes, sir; I used to be a member of NRA, but I am not anymore.

Senator DECONCINI. If you were going to hunt, would you take that weapon out to hunt?

Mr. DUFFY. No, sir. I can answer that question like a Virginia sheriff who serves on our legislative committee. He was probably the one—his statement was the one that caused us to unanimously support Senator Metzenbaum's legislation.

He is a life member of NRA. He hunts in Alaska, Canada, throughout the United States—one of those trophy hunters who has heads for his trophies, his animals that he has killed all over the walls. He said he has never seen any of the kinds of rifles described in the original version of Senator Metzenbaum's bill or any of the others that are here today anywhere in the woods, and if he did, he would get the hell out of the woods. [Laughter.]

Senator DECONCINI. You couldn't hit a deer very well from any distance with that type of weapon, could you?

Mr. DUFFY. Not from a distance, but if you spray enough ammunition, you could probably kill a whole herd of deer.

Senator DECONCINI. And, last, if these weapons were banned, all of them that are on the list of Mr. Stokes or Mr. Metzenbaum or my limited list, what kind of self-defense would the American public find itself in, those legitimate people who want to protect people?

Do you find that in the course of your dealing with the public that the American public uses or has this type of weapon for their self-defense at home?

Mr. STOKES. Senator DeConcini, I am away from home quite a bit. My wife has a shotgun and a 6-shot .38 Smith and Wesson at home if she wants to use it for home defense, and I believe that that is what the majority of Americans would use.

I don't think they would whip out an Uzi or a Street Sweeper and spray the interior of their home or the exterior of their home, which would find them at odds with the law, to protect themselves.

Senator DECONCINI. They are just not likely to have that under the bed, are they, or at the night stand or something?

Mr. STOKES. We know from homicide investigations that those weapons that are in the homes are generally turned on someone in that home or visiting that home. So, I am going to give my wife the least number of shots as possible, and I am not going to provide her with an AK-47 or Street Sweeper or an Uzi.

Mr. DUFFY. If they allow the escalation to continue, however, that was referred to in an earlier question, it may be that people will arm themselves with these if everybody on the streets are armed with these.

Senator DECONCINI. That is the point.

Mr. DUFFY. And I think you have to call a halt to this escalation.

Mr. NOLAN. These type of weapons, if they were used at home for home protection, would penetrate so many walls in a home that your entire family would be at risk.

Senator DECONCINI. Just by the fact that you might use it for self-defense.

Mr. NOLAN. And I know your question is not posed for this purpose, but it is an absurdity to consider it, in all reality.

Senator DECONCINI. That is exactly what I wanted to hear.

Mr. NOLAN. Yes.

Senator DECONCINI. Thank you.

Mr. Dupnik.

Mr. DUPNIK. I couldn't agree more. I don't think the argument has any real basis in fact.

Senator DECONCINI. Thank you. Thank you, Mr. Chairman.

Senator SIMON. Thank you. If I could just ask Sheriff Duffy one final question in response to something you said to Senator DeConcini, when you seize these kinds of weapons, what do you do with the weapons you seize?

Mr. DUFFY. Well, we have had to give them back on occasion. If there is any way we can avoid it, we do, but as long as a weapon is not illegal and unless we can make some other case with it, the weapon must be returned, and that is the scary part.

Senator SIMON. But assuming you don't have to return it, what do you do with it?

Mr. DUFFY. Destroy them.



Senator SIMON. All right. We thank all of you very, very much. You are on the front line defending the American public and we have to do a better job defending you, and we are grateful to you. Thank you.

Mr. DUFFY. Thank you, Senator.

Mr. STOKES. Thank you, Senator.

Mr. NOLAN. Thank you.

Senator SIMON. The next panel is Mr. Phil McGuire and Dr. Roxanne Roberts. Mr. McGuire is the law enforcement advisor for Handgun Control, Inc. We are very happy to have you with us, Mr. McGuire. Before you begin, I would like to note the presence of my colleague from the State of Vermont, Mr. Leahy, who has just arrived.

**PANEL CONSISTING OF PHILLIP C. MCGUIRE, LAW ENFORCEMENT ADVISOR, HANDGUN CONTROL, INC.; AND DR. ROXANNE R. ROBERTS, TRAUMA SURGEON AND ASSOCIATE DIRECTOR, COOK COUNTY HOSPITAL TRAUMA UNIT, CHICAGO, IL**

**STATEMENT OF PHILLIP C. MCGUIRE**

Mr. MCGUIRE. Thank you very much, Mr. Chairman. I have a very brief statement and, with your permission, I would like to show a very brief videotape upon conclusion of my statement.

Senator SIMON. If you can confine the whole thing to 5 minutes.

Mr. MCGUIRE. Yes, sir, thank you very much.

As some of you know, I recently retired after more than 26 years of service with ATF. The last 6½ years, I spent as associate director for law enforcement. I would like to praise Senator Metzbaum, and specifically Senator DeConcini. I still bear some of the scars from being chastised and taken to task by Senator DeConcini when he felt concern about application of previous firearms laws, and I know it takes a lot of courage for him to be here today because he is a loyal supporter of sportsmen's rights, which I consider myself to be also, Senator DeConcini.

Many people have spoken today about the semiautomatic assault weapon being the choice of weapons for narcotics violators, but there has not been nearly the publicity associated with their use by the hate groups.

These hate groups, acting on their racist and anti-Semitic ideologies, rely upon assault weapons to carry out their terrorist activities. In recent years, ATF and other agencies have been able to successfully arrest and prosecute members of the Aryan Nation, the Covenant, the Order, the Sword, the Arm of the Lord, the Ku Klux Klan, and the Posse Comitatus.

White supremacist groups brandishing machineguns for the purpose of intimidation are frequently brought to the attention of ATF and other law enforcement groups. Unfortunately, though, on most occasions upon investigation it is determined that those aren't really machine guns; they are semiautomatic assault weapons. So, therefore, law enforcement's hands are tied in their ability to do anything unless the individuals have, in fact, committed a crime.

Today, as we speak, there is a trial going on in Shelby, NC, where an individual by the name of Sheets, who is a member of the



White Supremacist Party in North Carolina, is being tried for the murder of three individuals.

Connected with Sheets and Glenn Miller and Roger Jackson in a raid in Missouri, a large stockpile of semiautomatic assault weapons and some fully automatic weapons were seized. Associated with these individuals was a declaration of war, and in that declaration they assigned points—five points for the killing of blacks and homosexuals and, unfortunately, 800 points for the killing of Morris Dees, who is executive director of Klan Watch down in Alabama.

We feel that the passage of either of these bills—specifically, the stronger bill, Mr. Metzenbaum's bill—would be a valuable tool in getting at these individuals who are using their firearms as instruments of war in their violation of civil rights of specific groups.

I would like to show the video at this time. I think you will find it illuminating. There are those who say that you cannot distinguish between assault weapons and true sporting weapons. Hopefully, this brief video will be of some assistance to you in that regard.

[Videotape shown.]

Senator SIMON. Thank you, Mr. McGuire.

[The prepared statement of Mr. McGuire follows:]

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**HANDGUN CONTROL**

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TESTIMONY OF PHILLIP C. McGUIRE  
LAW ENFORCEMENT ADVISOR FOR  
HANDGUN CONTROL, INC.

TESTIMONY BEFORE THE  
SENATE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION  
FRIDAY, MAY 5, 1989

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify today. As some of you know, I recently retired after more than 26 years of service with the Treasury's Bureau of Alcohol, Tobacco and Firearms, where I most recently held the position of Deputy Director and Associate Director for Law Enforcement. In that capacity, I was responsible for all law enforcement activities of the Bureau nationwide. I am pleased to be here in my current role as Law Enforcement Advisor for Handgun Control, Inc., a citizens group organized to prevent gun violence.

On behalf of Handgun Control, Inc., I wish to thank Senators DeConcini and Metzenbaum for offering legislative solutions to the growing problem of semi-automatic assault weapon violence. We commend Senator DeConcini for introducing S.747. His bill would outlaw many weapons of war. However, Handgun Control, Inc. has endorsed S.386, introduced by Senator Metzenbaum, because we believe it goes further than S.747. S.386 offers a more comprehensive list of semi-automatic assault weapons. In addition, S.386 provides for a waiting period for transfers of those semi-automatic assault weapons already legally possessed, and prohibits future manufacture and importation of large capacity magazines.

More and more Members of Congress have seen that within the complex gun issue, distinctions can be made. In 1986, Congress closed the loophole which allowed the importation of Saturday Night Special parts; stopped the manufacture and importation of new machine guns; and stopped the sale of armor piercing ammunition. In 1988, Congress prohibited the manufacture and importation of undetectable firearms, potential weapons of terrorists.

In the course of these policy decisions, Members of Congress carefully weighed the recommendations of law enforcement and the potential impact on law-abiding citizens. Clearly, the public interest and safety was served in all these areas.

What is particularly significant about passage of the undetectable firearm law is that Congress acted to prevent a problem. It is in this context that we should look at the assault weapon issue.

I believe we all agree that drugs are a cancer eating at the very fabric of America. It has become a multi-billion dollar industry which is now taking on a corporate mantle. Law enforcement reports that drug dealers are now setting up franchises outside of major cities. With the drugs come the firepower of assault weapons -- to protect turf and escape arrest.

We commend the Bush Administration for recognizing this drug and gun connection, and suspending the importation of twenty-nine specific types of semi-automatic assault weapons. The Administration has acted within the confines of existing law, allowing the Secretary of the Treasury to limit importation of firearms which are not suitable for sporting purposes. We also commend Colt Industries which temporarily stopped the sale of its AR-15 semi-automatic assault weapon; and Sturm, Ruger & Co. which stopped shipping the folding stock version of the Ruger Mini-14, and magazines with a capacity of more than five rounds. We welcome these initiatives and look forward to further action to make the ban on these deadly weapons permanent.

Many people already know that semi-automatic assault weapons are becoming the choice weapons of narcotic traffickers. What they may not know is that semi-automatic assault weapons are also a favorite weapon of hate groups.

These hate groups, acting on their racist, anti-semitic ideologies, rely upon assault weapons to carry out their terrorist activities. In recent years, ATF and other agencies have been able to successfully arrest and prosecute numerous members of such groups as the Aryan Nation; The Order; The Covenant, The Sword, and The Arm of the Lord (CSA); the Ku Klux Klan; and the Posse Comitatus.

I am sure that you are aware of the recent seizure of assault weapons within two miles of the Capitol. According to reports, authorities arrested four men and two women who had in their possession assault weapons, silencers, a grenade launcher, and a flag with the Nazi swastika.

Another example of the terrorist right's fascination with guns was exhibited at the CSA compound in Arkansas. After a four day siege, the CSA surrendered to ATF on a federal firearms arrest warrant for which they were subsequently convicted and incarcerated.

At the CSA compound, agents found 146 long guns, many of which were semi-automatic assault rifles. They also discovered 30 machine guns, many of which were previously semi-automatic assault rifles converted to fire fully automatic. They also found silencers, handguns, bombs, mines and anti-aircraft rockets.

In another case, the extreme right's reliance on assault weapons was demonstrated when a joint federal task force executed search warrants on bombing conspirators belonging to the Posse Comitatus. At four locations in Minnesota, fifty firearms, including machine guns and semi-automatic assault rifles, were seized along with explosives and ammunition.

Avowed leader Glenn Miller, along with Douglas Sheets and Robert Jackson, all members of the White Patriot Party, were arrested near Springfield, Missouri in possession of two converted AR-15 rifles and several semi-automatic assault weapons. Linked to these individuals is the White Patriot Party Declaration of War assigning 50 points for the murder of blacks, 5 points for homosexuals, and 800 points for Morris Dees, Executive Director of the Southern Poverty Law Center.

Currently, in Shelby, North Carolina, Douglas Sheets is being tried in federal court for the murder of three individuals and the shooting of two others who may well have been the subjects of their declaration of war.

Fortunately, in each of these investigations federal authorities were able to prosecute individuals for possession of fully automatic weapons. But all too frequently, ATF and other law enforcement officials are notified of KKK members and other white supremacist groups brandishing "machine guns" for the purposes of intimidation. Upon investigation, authorities learn that the weapons are not fully automatic, but no less lethal semi-automatic assault weapons, and the individuals unfortunately have violated no firearms law. Passage of legislation restricting semi-automatic assault weapons would give law enforcement another tool in attacking these extremist organizations.

You have heard from opponents that semi-automatic assault weapons cannot be distinguished from semi-automatic hunting rifles. That is simply not true. Sporting rifles and semi-automatic assault weapons are two distinct classes of firearms. While semi-automatic hunting rifles are designed to be fired from the shoulder and depend upon the accuracy of a precisely aimed projectile, semi-automatic assault weapons are designed to maximize lethal effects through a rapid rate of fire. Assault weapons are designed to be spray-fired and because of their design, a shooter can maintain control of the weapon even while firing many rounds in rapid succession.

Semi-automatic assault weapons were designed for military, not sporting purposes. While opponents of legislation restricting these weapons of war argue these weapons only "look scary," there is good reason why these features on assault weapons should frighten the public. Features such as silencers, folding stocks and bayonets are not cosmetic; they are in fact combat hardware.

In the case of a rifle or shotgun, a firearm with a folding stock sacrifices accuracy for advantages such as concealability and mobility in close combat.

In the case of a rifle or shotgun, a pistol grip facilitates firing from the hip, which allows the shooter to spray-fire the weapon. A pistol grip also helps stabilize a firearm during rapid fire.

In the case of a rifle or shotgun, a barrel length less than 22 inches sacrifices accuracy and range for mobility in close combat. Coupled with a folding stock, a shorter barrel facilitates concealability.

In the case of a pistol, an ammunition magazine outside of the pistol grip is more the characteristic of an assault weapon than a sporting handgun.

A threaded barrel, designed to accommodate a flash suppressor, serves no useful sporting purpose. A flash suppressor allows the shooter to remain concealed when shooting at night, certainly an advantage in combat but unnecessary for hunting or sporting purposes. In addition, the flash suppressor is useful in preventing barrel climb during rapid fire, helping the shooter maintain control of the firearm.



A threaded barrel designed to accommodate a silencer is useful to assassins but has no purpose for sportsmen.

A barrel mount designed to accommodate a bayonet obviously serves no sporting purpose.

A barrel shroud is designed to cool the barrel so that the firearm can shoot many rounds in rapid succession without overheating. It also allows the shooter to grasp the barrel area, without incurring serious burns, during rapid fire.

High-capacity magazines are unnecessary for hunting or sporting purposes. In fact, federal migratory game laws limit to three the number of rounds which can be used for hunting migratory birds. Many states further restrict the number of rounds hunters may use with their semi-automatics or shotguns. For example, Arizona limits shotguns to three rounds and semi-automatic rifles to 5 rounds while hunting. Illinois limits shotguns to three rounds for all game. Pennsylvania limits shotguns to three rounds for small game, and prohibits the use of semi-automatics for hunting.

Clearly, it is possible to distinguish between semi-automatic assault weapons and semi-automatic hunting rifles. We urge the Judiciary Committee to act quickly to outlaw these weapons of war.

My vocation and experience in firearms identification has put me in a unique position to witness firsthand the realistic—and I repeat, the realistic problem and realistic magnitude of problems relating to firearms and criminal activity.

Although my testimony here is not as an official spokesman for the Los Angeles Police Department, it will be factual, not conjecture, and based on my personal experience in training in the field for nearly two decades.

Since I will endeavor to be realistic, let us look at the facts and not the myths. Do we have a large quantity of violent crime involving firearms? The answer is yes. Do we have a larger quantity of violent crime without firearms? The answer is yes.

Have we had an increase in so-called assault weapons being involved in violent crimes? The answer is yes. We have definitely seen an increase in the criminal use of these firearms during the past 8 years. We have also seen an increase in quality—and I repeat that, quality—semiautomatic pistols, shotguns, and other weapons during the same time period.

Now, are these assault weapons the criminal's weapon of choice? The answer is no. We take into custody more handguns or shotguns or .22 caliber rifles than any quantity of assault weapons that are seized.

From an informal survey that we took in our unit, with over 4,000 guns that we took into custody during a 1-year period, slightly more than 120 would be classified under this definition of assault weapon, and that is approximately 3 percent, not the 20 to 50 percent embellished figures I have been hearing rumored.

Now, are the majority of these firearms being illegally converted to full automatic machinegun status? The answer is no. Our unit receives about a dozen guns a year that have been modified, or attempt has been made to make these things full automatic.

Approximately half of these are failures or completely unreliable. Why? Because the vast majority of such firearms that you have presented here are difficult to convert and require extensive modification.

During the past, we have had three primary firearms that were involved in conversions, and that was the Colt AR-15, the MAC-10/11 variant by RPB and SWD, and the Uzi carbine. Now, why were these so popular conversions? Not necessarily because the conversion was easy, but the simple availability of substitution machinegun parts. Now, that loophole has been closed up recently by the McClure-Volkmer Act that was passed in 1986 regarding the accessibility of those parts, and that was good legislation.

On the other hand, if any criminal has the intense desire to create a machinegun, any semiautomatic firearm can be used. And we have had the National Firearms Act of 1934; that thing is about 55 years old now and it prohibits the fabrication and possession of unregistered machineguns, silencers, and sawed-off shotguns.

The threat of prison has not seemed to deter the criminal. In fact—and this is fact, gentlemen—we seize more sawed-off shotguns and rifles combined than we do all these assault weapons that you have presented here.

An interesting note is that we also received a numerous amount of .22 rifles and handguns that have been converted or attempted

Senator SIMON. Our next witness is Dr. Roxanne Roberts of the Trauma Center of Cook County Hospital in Chicago. We are happy to have you here with us, Dr. Roberts.

#### STATEMENT OF DR. ROXANNE R. ROBERTS

Dr. ROBERTS. Thank you, Senator.

As the Senator said, my name is Dr. Roxanne Roberts. I am a trauma surgeon and the associate director of the Cook County Hospital Trauma Unit in Chicago. I am one of eight attending physicians and a large group of residents, nurses and technicians who provide 24-hour staffing for our unit.

Cook County Hospital is this country's first trauma unit, established in 1964. It was founded as a separate area from the emergency room because of the large number of critically ill trauma patients monopolizing the emergency services.

Our trauma unit sees approximately 3,000 trauma victims every year. Sixty percent of these, or approximately 1,800 patients a year, are victims of penetrating trauma. Sixty percent of these, or approximately 1,000 per year, have sustained gunshot injuries.

We serve an inner city population with a high rate of violent crimes, many of which are drug- or gang-related. However, what has traditionally been labeled as "urban violence" is now being seen in communities formerly thought of as enclaves of safety. The slaughter of innocent school children in Stockton, CA, is one such example.

In the 9 years since I have been at Cook County Hospital, the profile of penetrating trauma has shifted. In the past, the typical victim would have sustained a single, medium-velocity handgun injury to an isolated body region. Many of the chest and extremity injuries just required a diagnostic work-up, some simple nonoperative treatment, and observation alone. Only approximately 20 percent would actually need operative intervention.

Although all penetrating gunshot wounds to the abdomen are operated on, in the past the majority of these patients were in stable condition and the injuries seen at operation could be easily managed with only minimal need for transfusion of blood. The general expectation was for a good outcome for the victim.

Recently, we have observed a disturbing trend. Victims are now coming in with multiple bullet wounds through many different parts of their bodies, in shock, barely alive. Many times, it is difficult to decide which organ system to address first. It is not atypical to have several such victims come in, especially on a Friday or Saturday night, and require immediate lifesaving operative intervention.

A week ago, upon opening one such abdomen, the liver had a 10-cm-deep stellate crack with blood pouring out. The colon and duodenum were split through and through, the kidney was shattered, and the major blood vessels were blown apart. Unfortunately, 30 liters of fluid, 24 units of blood, and many hours later, the patient died on the operating room table.

Next door, simultaneously, two other teams were engaged in a similar lifesaving struggle. Another victim, shot through the chest, abdomen and arm, was having his chest and abdomen simulta-

neously opened. Unfortunately, he bled to death. This scenario is becoming more frequent.

The key that ties these victims together and has made a change in the penetrating trauma profile is the wounding agent. The most popular of these weapons in our city are the Tec-9, MAC-9, 10 and 11, and the Uzi. These are high-velocity, 9-mm weapons and cost approximately \$300 apiece on the streets of Chicago.

With an hour of time, a drill, and a screw, the Uzi can be turned into a fully automatic weapon that will discharge an entire 30 rounds with one touch of a finger. High-velocity weapons are much more deadly than the medium-velocity handguns of old.

When a high-velocity bullet hits the body, it forms a temporary cavity and expands the cylindrical permanent cavity cut by the bullet to 10 to 15 times the diameter of the bullet. Now, with these automatic weapons, this destructive power is further multiplied to 30 times.

We have been warned by the Chicago police that more and more of these weapons are being confiscated on our streets, so we can expect an increasing number of these catastrophic injuries. It will be a long, hot summer for us on the Cook County Trauma Unit and in other major inner city hospitals.

It is critical to stop the proliferation of weapons that make the hope of lifesaving medical intervention impossible. My colleagues and I do not mind the hard work and odd hours taking care of these trauma patients, but we would like a fighting chance. I add my voice in support of Senator Metzenbaum's assault weapon control bill.

Thank you very much.

Senator SIMON. Thank you, Dr. Roberts. Dr. Roberts, I don't mean any disrespect to you here now, but you haven't been practicing medicine too many years. How long has it been since there has been this change that either you have experienced or your colleagues with whom you work where you see this shift in what is happening to people?

Dr. ROBERTS. I would say in the last year and, in fact, with the coming of summer, which is our busiest season, actually, with the gangs and the drug problems, we have been seeing—they have been multiplying. Weekend by weekend, we see more and more of these type of injuries.

Senator SIMON. And you have described the difficulty you face in trying to save lives. In fact, there is also a dollar cost to all of this, isn't that correct?

Dr. ROBERTS. Yes, sir. We are talking about tens of thousands of dollars not just for the operation, the blood products, and the equipment we need to use, but postoperatively these patients need intensive care, and I don't have to tell you how expensive that is. I mean, day by day the dollar signs are going up higher and higher.

Then after that, most of these victims require extensive rehabilitation and, unfortunately, a lot of the victims are Medicaid and medicaid patients as well.

Senator SIMON. And these weapons tend to be used in the poorer sections of the community?

Dr. ROBERTS. That has been my observation, sir.

Senator SIMON. Mr. McGuire, one of the things that hit me as I looked at that video is the difference between the gun that is designed for shoulder use and all these others. Are any of these assault weapons designed for nonshoulder use?

Mr. McGUIRE. They can be fired from the shoulder, but all that I see are designed to be fired from the hip as well, spray-fired.

Senator SIMON. So that in terms of definition—and we have been doing a little—I hope we don't get too bogged down in the definitional side of things, but one of the things that we could describe as a difference is whether it is designed for shoulder use or non-shoulder use?

Mr. McGUIRE. Yes, sir, I think so. I think it is a critical element.

Senator SIMON. Senator Specter.

Senator SPECTER. In light of the lateness of the hour, Mr. Chairman, and the additional witnesses which we have, I will not ask any questions of this panel.

Senator SIMON. Senator Metzenbaum.

Senator METZENBAUM. A few questions. First, let me say I am grateful to both of you for your testimony here today. It is helpful, and I appreciate particularly the support of Handgun Control, Inc.

Dr. Roberts, I have continually heard opponents of my bill say there is no way to differentiate between assault weapons and hunting rifles. I don't know whether you get any wounds from hunting rifles brought into Cook County Hospital, but if you do, is there a difference between the kind of wound that is experienced from a hunting rifle as compared to an assault weapon?

Dr. ROBERTS. Sir, I would not be able to distinguish it based on the individual wound. However, what happens when these weapons are made automatic, they just fire the whole magazine. So, oftentimes, we can suspect that someone has been involved with an Uzi, say, because the patient will have multiple injuries all over his body. And the more regions that are injured, the higher mortality of these victims, and that has been established in medical literature.

Senator METZENBAUM. Dr. Roberts, I have some vague recollection of hearing that it is not as easy these days to obtain blood. Is that a fact?

Dr. ROBERTS. Yes, sir. In fact, the case that I described, the 24 units of blood that we used depleted our blood bank.

Senator METZENBAUM. Depleted your blood bank?

Dr. ROBERTS. Yes, sir. We had to call for the Red Cross.

Senator METZENBAUM. So, what we are talking about is not only loss of life from the actual killings, but we are also talking about the threat to the lives of other patients who have nothing at all to do with guns, but who are in need of blood, and it is very difficult to obtain blood under present circumstances. Is that a correct statement?

Dr. ROBERTS. Yes, sir. You have really hit the nut on the head, certainly for us. I mean, the thing that concerns us the most is that in our efforts to try to save these people, we go to every extreme that we can because we have short transport times. The victims arrive very quickly. They have only been down a short amount of time, so we just go full-court press, and we will go as far as 24 units



and the end of our blood bank, and it is very unfortunate, very unfortunate. It is going to be costly for us this summer.

Senator METZENBAUM. Mr. McGuire, I take it from your testimony that you believe that assault weapons can be differentiated from semiautomatic hunting rifles. Am I correct in that?

Mr. MCGUIRE. Yes, sir, you are.

Senator METZENBAUM. Do you personally have much experience with hunting? Are you a hunter?

Mr. MCGUIRE. Yes, sir, I am a hunter. When I retired in December, my first priority was to get out of town and the second priority was to spend the month of December hunting. I am not as good a shot as Goldwater, but I have a freezer full of deer and quail and turkey, and I have not used an assault rifle yet.

Senator METZENBAUM. You mentioned a number of features of an assault weapon—folding stocks, pistol grips, shorter barrels, and so forth. Do these create functional rather than just cosmetic differences between assault weapons and hunting rifles?

Mr. MCGUIRE. Yes, sir, it definitely does. For instance, the barrel shroud is there for the purpose of cooling the barrel and can be touched after rapid fire because the barrel itself will get hot.

The pistol grip is there for the purpose of holding the weapon at the high and spray-firing. The collapsible or folding stock is there for the purpose of more readily concealment or better utilization during close contact.

Senator METZENBAUM. You were in charge of enforcement at the Bureau of Alcohol, Tobacco and Firearms during the Reagan administration. Both my bill and Senator DeConcini's bill bar specifically named firearms, but both also include language to deal with the problem that someone could simply change the name of an assault weapon, perhaps with some cosmetic difference, and argue that it is not covered by the bill.

Do you believe that we have to include some language along this line to avoid creating a huge loophole?

Mr. MCGUIRE. I think it is critical that you do that and you give the Secretary of the Treasury and ATF the authority to apply that. You have, certainly, remedies to come back if that intent is misappropriated, but it is essential that they have the ability to deal with those weapons that are manufactured under a different name for the same purpose.

Senator METZENBAUM. The NRA has argued that our language is so broad it could be interpreted to cover most or all the semiautomatic weapons. Do you think they are correct?

Mr. MCGUIRE. No, I don't, and I think that there is empirical evidence that if that were the case, it probably could have been done in the past, and has not been done. I have complete faith in Director Steve Higgins' ability to apply the law as passed by Congress and with the intent that the bill is passed.

Senator METZENBAUM. One last question. You were in charge of enforcement of the Bureau of Alcohol, Tobacco, and Firearms. Why didn't you take care of this problem while you were in charge of that?

Mr. MCGUIRE. Well, as a member of the executive branch, we did the best with what we had, Mr. Metzenbaum.



Senator METZENBAUM. We have to change the law in order to make it possible?

Mr. McGUIRE. Yes, sir; I think that there are needed changes and I think that the testimony from the law enforcement executives who were here today was right on point.

Senator METZENBAUM. And so without the change in the law, the BATF can't do very much?

Mr. McGUIRE. No, sir, they cannot, and I would also encourage this committee to share its findings with the appropriations committees because if, in fact, either of these bills are passed, I feel that more appropriations will be necessary for the Bureau to successfully enforce these statutes, both regulatory and law enforcement.

Senator METZENBAUM. I want to say I am grateful to Dr. Roberts and you, Mr. McGuire, for your testimony here today. It is extremely helpful and enlightening.

Senator SIMON. Let me just add my appreciation, too. You have nothing to gain personally other than building a better society and I am grateful to both of you for standing up. Thank you very, very much.

Our final panel is Officer Leroy Pyle, Detective Jimmy Trahin, and Dr. Edward D. Ezell. Let me just say while the witnesses are taking the stand that there was some concern that two of the witnesses might be in some jeopardy in terms of their jobs if they testified here.

While I differ with their conclusions in terms of the legislation, one of the things I believe in very strongly is that any American citizen ought to be able to come and testify to Congress about his or her beliefs, and no job should be in jeopardy because of that.

I have indicated to the National Rifle Association that if there should be any problem at all in terms of job jeopardy that I would be happy to contact the appropriate officials on that, and we appreciate your being here and your testifying.

First, Officer Leroy Pyle of the training division of the San Jose Police Department.

Senator METZENBAUM. Mr. Chairman, just before they testify, I just want to say I totally support the statement that you made. I would stand allied with you on the question of the jobs.

I would appreciate if each of the witnesses would indicate whether they are testifying on behalf of their employer or whether they are testifying individually just to clarify the record.

Senator SIMON. OK.

Senator SPECTER. I would make one comment beyond that. I think that the case law has expanded in this field that it would be a deprivation of constitutional rights if anybody interfered with your employment relationship. There have been cases in this area which so hold. So, you cannot legitimately, legally, have any recourse or punishment as a result of appearing and testifying in this proceeding.

Senator SIMON. I would add that my staff has just told me that the chiefs of police involved have assured us there will be no retribution.

Senator METZENBAUM. I might say, Mr. Chairman, I have in my hand letters addressed to me from the chief of police of the Los An-

geles Police Department, the president of the Los Angeles Police Protective League, a letter from Mr. McNamara, chief of police of the City of San Jose, CA, and another item here from—an official publication of the San Jose Police Officers Association—which I think we should put in the record at this time, I think, recognizing the right of these people to testify as individuals.

Senator SIMON. They will be entered in the record.

[Information follows:]

## LOS ANGELES POLICE DEPARTMENT

DARYL F. GATES  
Chief of Police



TOM BRADLEY  
Mayor

P. O. Box 30158  
Los Angeles, Calif. 90030  
Telephone:  
(213) 485-3202  
Ref #: 1.1

May 2, 1989

The Honorable Howard M. Metzenbaum  
United States Senate  
140 Russell  
Senate Office Building  
Washington, D.C. 20510

Dear Senator Metzenbaum:

Detective Jimmy L. Trahin, a member of the Los Angeles Police Department, has informed my office that he intends to testify before the Senate Judiciary Committee on May 5, 1989.

Detective Trahin expects to present his views on military type assault weapons to the Committee. It is important to emphasize that Detective Trahin is not appearing before the Committee as a representative of the Los Angeles Police Department. He and my office are in full accord that any testimony he may give will represent his personal views and not an official position of the Los Angeles Police Department.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Daryl F. Gates".

DARYL F. GATES  
Chief of Police



COMPRISED OF  
THE POLICE OFFICERS  
OF THE CITY  
OF LOS ANGELES

## LOS ANGELES POLICE PROTECTIVE LEAGUE

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ASSOCIATE GENERAL COUNSEL

May 4, 1989

Senator Howard Metzenbaum  
SR 140 Russell Senate Office Building  
Washington, D. C. 20510

Dear Senator Metzenbaum:

In response to your inquiry, the Los Angeles Police Protective League supports legislation that would control sales and possession of assault type semi-automatic weapons not only in California but on the federal level as well.

As active members of the National Association of Police Organizations (NAPO), we have supported S386 through our NAPO representative and Vice President William Pattison who has testified before the Senate Judiciary Subcommittee on the Constitution. Our Chief of Police, Daryl F. Gates, has also testified as to the need for federal control of semi-automatic assault weapons before the same committee.

We appreciate your efforts to de-escalate the level of violence in our country and to provide law enforcement officers the support they need in providing a safer America for all of our people.

Very truly yours,

LT. GEORGE V. ALIANO  
President

GVA:ega


**CITY OF SAN JOSÉ, CALIFORNIA**

201 W. MISSION STREET  
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May 2, 1989

CHIEF OF POLICE  
JOSEPH D. McNAMARA

Senator Howard Metzenbaum  
140 Russell Senate Office Building  
Washington, DC 20510

Attention: Kevin Burtzloff

Dear Senator Metzenbaum:

The San Jose Police Department strongly supports your effort to outlaw military type assault rifles. The mayor and city council of San Jose have also passed a resolution urging the State Legislature to outlaw assault rifles. We view these weapons as having no place in a civilized society. Last year, within the boundaries of San Jose alone we seized 154 such weapons; tragically, each and every weapon is capable of causing a Stockton type massacre.

The following organizations also want assault rifles outlawed: the National Association of Chiefs of Police, the Major City Police Chief's Association, the California Police Chief's Association, the California Peace Officers Association, the San Jose Peace Officers Association (the collective bargaining agency for all San Jose police officers), the Federation of Police, the State Troopers Association, the Police Executive Research Forum and just about every legitimate law enforcement agency in the United States.

Hopefully your committee will not be distracted by the National Rifle Association's frantic efforts to confuse the public about the overwhelming desire of law enforcement to have these weapons of war outlawed. The NRA has searched throughout the country to find a few individual police officers opposed to the overwhelming majority opinion of law enforcement. These individuals have every right to their own opinion but your committee should realize that they are a very small minority. I urge you in the interest of the safety of police officers and citizens alike to pass this legislation.

Sincerely,

*Joseph D. McNamara*  
JOSEPH D. McNAMARA

JDM:bs  
8055J





### Pending Legislation on "Assault Type" Weapons

Carm J. Grande, President  
San Jose Police Officers Association

Members of the San Jose Police Officers Association have voted overwhelmingly to support California State Attorney General John Van de Kamp in his endorsement of Senate Bill 292 and Assembly Bill 267. Both pieces of legislation address a level of responsibility avoided by elected bodies over the years because of well organized lobbies threatening an erosion of our constitutional rights.

San Jose's police officers have very recently experienced a serious loss of life associated with the possession of a deadly weapon by a careless and deranged person. Similar tragedies have also recently occurred in Stockton and Los Angeles, California, inflicted by persons possessing the assault type weapons addressed in the proposed legislation. We believe it is time the majority of our society be protected and shielded from the trauma inflicted by the reckless ownership and discharging of such weapons. The proposed legislation protects the law-abiding, rational citizens in their desire to possess assault type weapons, but blanketly removes the guns owned by the unstable individual who feels a need to vent their personal image of low self-esteem on unsuspecting victims. We applaud the authors of SB 292 and AB 267 as this legislation is socially necessary and long overdue.

Senator SIMON. Officer Pyle, we will get to you here now, of the training division of the San Jose Police Department.

PANEL CONSISTING OF LEROY PYLE, POLICE OFFICER, SAN JOSE, CA; JIMMY L. TRAHIN, DETECTIVE, FIREARMS/BALLISTICS UNIT, POLICE DEPARTMENT, LOS ANGELES, CA; AND EDWARD C. EZELL, CURATOR, NATIONAL FIREARMS COLLECTION, NATIONAL MUSEUM OF AMERICAN HISTORY

#### STATEMENT OF LEROY PYLE

Mr. PYLE. Thank you, and good morning. I am a police officer in the State of California, as so indicated, and I have been employed as such for 25 years. I am currently employed by the City of San Jose and have been there for 16 years.

I am under direct orders from my chief to state a disclaimer prior to any public statements. So, in order to avoid any possible further department violations, can I make it perfectly clear that my opinions are my own. I do not claim to represent the city of San Jose nor its police department.

I would like to tell you, though, that I have spent my entire adult life in law enforcement and my opinions are a result of that experience. I have worked a variety of assignments, including patrol, traffic, undercover narcotics, vice, detectives, and am currently assigned to the training unit.

For a quarter of a century, I have worked with, played with, argued with, fought with, and socialized with cops. I think my opinions are shared by many in the law enforcement field.

I have some thoughts on the assault weapon issue, mainly that I am amazed that so much time, money, and effort is being put into legislation that, if enacted, would have very little effect.

In fact, if the legislation was retroactive to the beginning of my career, I cannot think of one case of mine or any that I assisted that would be affected. I have asked many officers at random to try to think of how their cases, how their lives might be changed by such legislation. Very few can give any examples, and those that do are not positive, since they realize that results depend on the participant following the law.

These are policemen and -women in an overworked environment right now where an extra day off requires a request 45 days in advance, if you are lucky. They run from call to call and they are familiar with crime stats that include hundreds of rapes, thousands of robberies and burglaries, and tens of thousands of victims each year. They are very, very busy in law enforcement.

And yet very few can think of an instance where assault weapon laws would make any difference in their daily life of law enforcement. I compare it to the old swamp and alligator story, if you are familiar with that.

I would like to advise you, too, of a concern of mine that the current antigun media hype is extremely detrimental to the working cop, the guy on the beat. A recent example involved the use of an assault weapon in San Jose. It was used very efficiently and effectively as the defensive weapon that it was intended to be. A fellow San Jose officer used it in the line of duty to protect his life and the lives of his fellow officers.

Can you imagine the effect of headline-seekers who claim that the only reason for such a weapon is to kill people? That is definitely not true, and it is certainly not the officer's reason for having the weapon and not an image the officer wants magnified in the press. Our weapons are for defensive purposes only.

And for some years, too, the law enforcement community has asked those same headline-seekers to avoid the emphasis on police body armor in their antigun advertisements. The use of terms like "cop killer" and an emphasis on methods of defeating an officer's protective equipment is commonly included in those ads.

The public is told untruthfully that we are losing and that we are outgunned. Police officers don't need those types of advertisements. It may be more than coincidence that the San Jose officer who was killed just a few months ago was killed by a shot to the face. He was wearing body armor, and I have considered that possibly many of these full-page advertisements may have contributed to his death in some way.

I hope you can understand how my opinion is based on my personal experience and affects my attitude toward this so-called assault weapon issue. It is clear that the success of such laws would have little effect on my job or any of the officers that I have worked with for 25 years.

I have observed the adverse results of the antigun police administration on in-house training and on our equipment, and the negative effects of unpopular politics forced on police personnel.

I certainly don't claim to know all there is to know about law enforcement, but San Jose is the third largest city in the State of California and, I think, fairly representative of large agencies.

I would not hesitate to say that the addition of 100 more gun laws would do little for the daily work of the street cop, and I honestly believe I speak for every police officer when I say that all this effort, all these headlines, all these editorials, would be better spent in putting some teeth into the many laws that we already have on the books.

There are thousands of arrests made by police officers every day, but very little followup on those arrests. Cops are doing their job every day and would prefer some actions and some words and some legislation that would support that effort. Legislation that emphasizes strict enforcement and mandatory jail terms for criminal actions can be assured of law enforcement support. That is the language that cops understand.

Thank you very much.

Senator SIMON. Thank you, Officer Pyle.

Detective Jimmy Trahin of the firearms and explosive unit of the Los Angeles Police Department. We are happy to have you here with us.

#### STATEMENT OF JIMMY L. TRAHIN

Mr. TRAHIN. Thank you, sir. I am honored with the privilege of being able to testify today before this subcommittee. With 18 years as a law enforcement officer with the Los Angeles Police Department, 12 of those years have been spent in the firearms/ballistics unit as a detective training officer.

to be converted to semiautomatic. Another interesting thing is that I have never received yet in our unit in the past 12 years an AK-47S that has been converted, or a Tec-9 that you have here converted, or an H&K 91 or 93 converted, a Valmet M76, and so on.

I have seen one attempt with a Ruger Mini-14, which is the second gun here from the right, attempted to be converted, and that was a complete failure. Why? Because 99 percent of these weapons are very difficult to convert.

Now, who owns the majority of these military firearms? The law-abiding citizen. I can categorically state, gentlemen, that if you took a survey of the police officers in this country, you would find that the vast majority would own at least—and I repeat, at least one of these guns that you have presented here for off-duty personal use.

When a law is passed for society's protection, it must do two things. One, it must solve the problem or show realistically that it will accomplish something to curb the problem. Two, the people must have respect for the law, knowing that it is in their best interest.

Now, let us consider number one. Does anyone believe firmly that banning assault weapons—I mean, a total ban on these assault weapons—will curtail the crime problem? Have restrictive gun laws worked here in Washington and New York City? I have talked to a lot of cops. No.

Is there any correlation with strict gun control and a decrease in crime? Absolutely not. I have talked to hundreds of fellow officers in my department and other departments, and the overwhelming majority agree that banning—a total ban on these so-called assault weapons, is not going to realistically decrease violent crime, gang activities, or narcotics trafficking.

Now, there is no question that the citizens of this country are frustrated and outraged with the ever-increasing crime problem. The police are, too. The reaction by some is to do anything, whether it works or not, and without careful consideration of the consequences.

It is wishful thinking and hope that if we put a ban on some of these guns, crime is going to decrease. These restrictive gun laws on these so-called assault weapons, I am afraid, will be giving the concerned citizen a false sense of hope—and that is the key there—and a false sense of security that crime is suddenly going to diminish if you get rid of these things. That is not going to happen.

Although, it is too early to reach a definitive conclusion, I have observed absolutely no positive effect whatsoever on the crime problem in Los Angeles since the local assault weapons ban was enacted 3 months ago.

Now, let us consider the second requirement of the law: The people must respect it. If a law is passed with the illusion of hope that it will do something, the people must be behind it.

Restrictive gun control directed at assault weapons will not strike fear in the hearts of criminals. I firmly believe, however, that it will have a detrimental impact on the respect for the law by hundreds of thousands of the average citizens who possess these military-style firearms.

Law enforcement requires the people's support. We do not need to create a new class of criminals. It is unfortunate that we cannot enforce the thousands of gun laws presently existing. We do not have enough police, prosecutors, courts, judges, jails, prisons, or money.

Our entire criminal justice system, and especially in Los Angeles with our gang problem, is totally, and I mean totally, inundated. A criminal is lucky to get one-third of his sentence in jail, and the present gun laws are not being enforced.

Now, I have testified an excess of 400 times in firearms-related cases during the past 12 years. I have failed to see any significant use of the enhancement laws pertaining to guns involved in crimes. The majority of the time, they are not even filed on. If filed on, they are reduced or plea-bargained away. Fact: There is no present deterrent to using a gun in a crime.

In conclusion, I accept the fact that it is trendy right now to jump on this assault ban issue. However, it must accomplish something if we are going to have it implemented. It should be of utmost importance that the consequences of slowly deteriorating the second amendment to our Constitution be examined.

The problem is not bad guns versus good guns, which is what we are trying to do here. It is the bad guy using any gun in a criminal act with the knowledge that punishment for his actions will not be pursued.

It is ludicrous to believe that this pending legislation regarding assault weapons will decrease crime. I personally feel that it will create more problems—this is based on my own experience—it will create more problems for law enforcement than it will solve, especially for the law-abiding citizen.

I thank you, and I urge you to consider my testimony here today. Senator SIMON. Thank you.

Dr. Ezell is the curator, Division of Armed Forces History, National Museum of American History.

Dr. Ezell.

#### STATEMENT OF EDWARD C. EZELL

Mr. EZELL. Good morning. I, too, welcome the opportunity to be here today and to testify on this issue. I might add that I am, in the sense, the Government gun collector because I am the curator of the national firearms collection.

While I am here talking as an individual today, I can tell you that in my official capacity, I collect a good number of firearms off of the Drug Enforcement Administration seizure lists and off of the ATF seizure lists, and until recently we have seen only a very few of the assault-type rifles appearing on those lists.

Along with Detective Trahin, the primary thing being seized [both including people who are technically violating the law and criminally violating the law] that we see on those lists are mostly handguns and shotguns. As a result, the Smithsonian is getting a better and better collection of modern handguns and shotguns.

My testimony today stems from a lifetime of study of military and civilian firearms. In addition to authoring nearly 40 articles and numerous public presentations on this subject, I have written



eleven books on the topic, including the only English language history of the Kalashnikov assault rifle development program in the Soviet Union and two histories of U.S. light-weight automatic rifles, as I prefer to call them, since 1945.

My knowledge in this field leads me to believe that while the purpose of these bills—that is, to make our communities safer—is laudable, the premises on which the proposed legislation is based are seriously flawed. Both the problem of the abuse of firearms in crime and the potential solutions require more detailed study before legislation is approved.

The public debate over the abuse of so-called assault rifles and military-style weapons in crime today is, as Detective Trahin suggests, virtually data-free. Many public figures and law enforcement executives have spoken of, "high-tech killing machines," and a proliferation of so-called assault rifles in the hands of youth gangs and hit men for the drug dealers.

As a scholar of firearms and a Ph.D. in the history of technology, when I hear such statements, I am naturally interested in the data upon which they are based. But when I have queried forensic specialists in major law enforcement agencies, including the Los Angeles Police Department, about statistical information regarding the use of assault rifles in crimes, I have been told that such data does not exist.

What I generally get are emotional anecdotes which surround the tragic killing of law enforcement officers and other citizens. But the exact relationship of these assault weapons vis-a-vis handguns, shotguns, knives, and other weapons that are used to kill Americans on a daily basis, does not seem to exist beyond very general information available in the FBI's annual uniform crime reports.

Rather than being based on evidence, it is likely that most of our law enforcement officials have spoken out against the availability of assault rifles in an effort to convince the public and their communities that they are trying to resolve concerns over public safety during an epidemic of drug-related slayings.

While the concern of such law enforcement officials and elected office-holders to effectively curtail drug-related violence is also laudable, the proposed legislation is more of a solution to a short-term political problem than to the long-term prevention of crime.

The proposed legislation, I feel, is unlikely to eliminate the access of organized, enduring, well-financed drug cartels and their U.S. street distributors to firearms of their choice.

Given the present problem of crime in America, Federal legislation relating to firearms misuse is necessary and inevitable. If the committee will permit a considered judgment, I would like to point to what I consider to be an appropriate avenue for legislative action.

There are two types of individuals for whom access to any firearm ought to be prohibited—the lone lunatic, the Purdys, and the street criminal. More thorough background checks will target the lone lunatic, who, if denied an over-the-counter purchase, is less likely to have access to an underground network of firearms. But the background check will not stop the street criminals, most of

whom obtain their weapons through criminal acquaintances who invariably have access to illegally-acquired firearms.

For the criminal, his level of criminality can measurably be suppressed by severe incarceration sanctions. This inevitably means increased expenditure for prison construction, more prosecutors, better enforcement, and the cost of keeping criminals in jail.

This committee and the Congress, if you will pardon the pun, must bite the bullet and take such measures. The alternative, Senate bill 386 and Senate bill 747, is merely a palliative. It is a political solution to only part of the guns and crime problem.

Once again, I would like to thank you for the opportunity to testify today on the profound issues before this committee. As a scholar, I have invariably found that valid conclusions can be gained only by rigorous application of cold reason to an objectively compiled set of facts. Quick, impassioned essays may make for good reading, but they rarely make for good scholarship.

As this committee continues its hearings and deliberations, I have reason to hope and to expect that you will seek out the relevant facts and draw reasoned conclusions.

Thank you very much.

Senator SIMON. Thank you.

[The prepared statement of Mr. Ezell follows:]

TESTIMONY  
TO BE DELIVERED TO THE  
CONSTITUTION SUBCOMMITTEE  
SENATE COMMITTEE ON THE JUDICIARY  
10 May 1989

by Edward C. Ezell, Ph.D.

My remarks today result from a lifetime of investigating the history of firearms. Being a student of American history, these comments are grounded in the knowledge that a topic such as private ownership of firearms is as complex and emotional as the debate surrounding other such issues as abortion, alcohol use, drug use, prayer in the schools and the host of others that enliven the political life of our nation. As with these other issues, private ownership of firearms (an individual right) must always be balanced against the question of public safety (the common good). We as a nation are now being asked to make the political judgment: should the private ownership of firearms be severely curtailed in order to promote broader concerns for the general welfare.

Curtailling the private ownership of firearms, as called for in S.386 and S.747, should only be undertaken if there is sufficient evidence that the firearms currently held legally by individual citizens pose a serious threat to the general public safety of this nation's citizens. It is not enough to have a dislike personal ownership of specific classes of firearms. It is not enough to believe that people should not own guns. Justification for additional federal legislation only can be found if there is in Justice Oliver Wendell Holmes' words a "clear and present danger."

I have been professionally studying and writing about the history of military small arms for more than twenty five years. These explorations have been carried out within the historical context of the unfolding of Western technology and the development of the American nation. Firearms have always been an integral element in the personal possessions of portions of the American population. Such firearms have been used for hunting, recreation, and personal protection. As the technology of military firearms has evolved, so have the types of firearms kept by the gun owning populace. At various junctures the several states and the national government have addressed the ownership of firearms by the citizens of the United States. We are now at another of those historical junctures when federal, state and local legislation are contemplating curtailing the private ownership of a class of firearms. In this case a ban of so-called "assault weapons" is being sought.

Why are proposals being made to ban "assault weapons?" In part, because of a perceived increase in firearms violence, especially as associated with the growing trafficking in narcotics in many of our nation's cities. Since the tragic killing of five school children in Stockton, California on 17 January 1989 by Patrick Purdy, the legislative debate over "assault weapons" has grown increasingly heated. There is also a neo-Puritan desire on the part of some individuals and groups to ban "assault weapons," because they are "bad." Similar bans are being sought on tobacco, alcohol, abortions, and teenagers out after midnight. Troublesome social crises are not solved by compounding the problem with ill conceived legislation.

In following these developing discussions, I have noted that much of the colloquy has been characterized by both the absence of accurate data and unsubstantiated allegations. Since, I still harbor the belief that public policies should be based upon facts rather than emotions, I would like to offer the following observations.

I am troubled by several aspects of the proposed legislation. First, there is the issue of inadequate data to substantiate the "clear and present danger" posed by the so-called "assault weapons." Second, the attempts to define such "assault weapons" is seriously flawed. Third, the proposed legislation appropriately attacks the improper and criminal use of firearms in crimes of violence and drug trafficking, but does so in a context that does not address the primary firearms that are misused.

First, the nation lacks hard statistics that will tell legislators and executive policy makers exactly where "assault weapons" fall along the spectrum of weapons used in crimes of violence. Many public figures have talked of the danger of such firearms and the extent to which they are employed in criminal acts. Nearly all of their pronouncements are based upon anecdotal information.

When I have queried forensic specialists working with major law enforcement agencies for information about "assault rifles" in crimes I have been told that such data does not exist. Generally it is the "gut feeling" of police forensics officials that .38 caliber revolvers and 12 gauge shotguns continue to be the primary firearms used in crimes and shootings. Such limited data as does exist (e.g., the Uniform Crime Reports) substantiate this impression. Crime in the United States (the Uniform Crime Report for 1987)



indicates that rifles (which includes "assault rifles") are used in only 4 percent of homicides (see Table I).\*

In homicides of law enforcement officers in the small percentage of those deaths caused by rifles less than one of five involved rifles shooting cartridges that would qualify them as "assault rifles."

In Los Angeles of the 4,000 weapons confiscated in the last year only 120 could be classified as military-type weapons. Despite the current mythology, few, including drug dealers, seem to have much use for the longer and more cumbersome rifles for criminal acts.

Therefore, existing data suggests that there is no "clear and present danger" to the commonweal from the private ownership of "assault weapons." There is no evidence to support the oft heard argument that there is a full scale war underway in our city streets that is being fueled by these "assault weapons." Instead there is good evidence from the FBI's Crime in the United States that "murder is primarily a societal over which law enforcement has little or no control." This line of reasoning is supported by "the fact that

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\*In 1987 there were 20,096 murders down 2.5% from 1986 when there were 20,613. Of all these murders 44% were committed with handguns; 20% were committed with cutting weapons of all sorts; 8% were committed with poisons, explosives and other means; 7% were committed with hands, fists, and feet; 6% were committed with shotguns; 5% were committed with unknown firearms; and 4% were committed with rifles (Source: U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States, 1987).

nearly 3 of every 5 murder victims in 1987 were related to (17 percent) or acquainted with (40 percent) their assailants." Furthermore of the 10,556 murders committed with firearms during 1987 37% resulted from arguments; 20% resulted from felonious activities (robbery, arson and the like); 1% were suspected to have involved felonious activity; and 3% resulted from brawls while under the influence of alcohol.

Certainly, firearms pose a problem in our society, but so do knives and other edged weapons, and so do hands. The source of interpersonal violence is not the weapons used but a lack of respect for our fellow human beings and an absence of concern (social and moral) about the consequences of our acts.

Second, current attempts to define such "assault weapons" are seriously flawed. If one were to concede that there was a "clear and present danger" requiring the banning of "assault weapons," as proposed in S.386 and S.747 the definition of "assault weapons" will encompass at a minimum of 3.5 to 4 million firearms, millions more if the 'identical or nearly identical to an assault weapon' concept is rigorously pursued. Further there appears to be difficulty in identifying exactly what attributes constitute an "assault weapon." Thus these proposals attempt to ban a group of firearms either by maker's name or by imprecise terminology that attempt to specify model type. The definitional problem is one that will likely pose a serious administrative and legal wrangle for the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department that will be charged with enforcement of the proposed legislation.

Furthermore, civilian counterparts of military rifles have always been popular with the American shooting and collecting public. In addition to match shooters who compete with the M1A (civilianized M14) and AR-15 (civilianized M16), practical combat course shooters, and casual shooters who plink at tin cans with these arms, there are at least 30,000 collectors of modern military rifles who possess at least 3 or more such firearms. Since there are at least 3.5 to 4 million semiautomatic "assault rifle" look-a-like firearms in private hands that would fall under the explicit terms of the proposed Federal legislation, the documentation and tracking of such weapons would be a major undertaking (Tables 2 and 3).

Third, the proposed legislation attacks the improper and criminal use of firearms in crimes of violence and drug trafficking, but does so in a context that does not address the primary firearms that are misused. This raises the issue of fairness of law and citizen willingness to comply with the laws of the land. Unfortunately, it is a fact that in those California jurisdictions where laws have recently been enacted which ban possession and ownership of "assault weapons" the response from gun owners has been a negative one. Only a negligible number of firearms have been turned in. The inference must be made that by enacting the proposed legislation the Federal Government runs the risk of creating a new group of law breakers who simply refuse to acknowledge this legislation. A severe Federal law would also be probably doomed from the start if the gun owning public doubted the fairness and the motives of the Government.

The firearms owning public is increasingly aware of and concerned by what they perceive to be "data free" legislative debate. Many of these otherwise law abiding citizens believe that one of the constitutionally guaranteed rights is being treated as less important than those of others in our society. They know there is a crisis involving firearms, but it is a crisis of their abuse by criminals.

When we as a nation had a problem with drunken driving on our highways, we did not set out to ban a specific type of brand of automobile. We got tough with the individuals who abused alcohol while driving. Deprivation of the right to drive, and terms in jail for egregious offenders, have been keys to reducing the number of deaths on our highways due to driving while under the influence. The certain knowledge that stiff penalties are imposed on those who use guns in crime, and who illegally traffic in such firearms, is more likely to have a deterrent effect on the criminal use of all firearms than the removal of a specific class of difficult to define firearms from the hands of law abiding citizens.

There is a maxim that a government, especially a democratic one, should not pass a law that cannot be enforced because the public finds it unfair. Perception of fairness in the law is a keystone for public support of the social contract between the Government and the Governed. Legislation viewed severely restrictive, such as that proposed in S.386 and S.747, could produce a Volstead Act-type of law which would simply not be enforceable.

When the nation banned sale of alcoholic beverages it created an era of wholesale disrespect for the rule of law. Not just on the part of criminals who trafficked illegal alcohol, but among otherwise upstanding members of society. Likewise, public rejection of the 55 mile per hour speed limit has also illustrated the limits to legislating social behavior. In many regions of this country (I-95 north and south of Washington DC for starters) there is daily refusal by the bulk of drivers to obey the 55 MPH speed limit.

I submit, that passage of either S.386 or S.747 will at best cause deep seated resentment among the firearms owning public and at worst create a new class of scofflaw. These are the very individuals, who until recently, have been the strongest supporters of the law enforcement community. In this era of a national drug crisis, all Americans must pull together to bring an end to this menace to our children, adults, and society.

Given the present state of national affairs, legislation relating to firearms misuse is necessary and inevitable, but it needs to address "real" not "believed" problems. Therefore, I believe the Congress should try to collect the facts before making up its collective mind. Once the facts are in hand, Congress will have a better idea of the dimensions of the guns-in-crime problem and then its members will be able to more effectively evaluate the proper nature of legislative remedies that will work while maintaining respect for the process of law and order. Let us pass laws that meet goals that we can all support, reduction of firearms use in crime, while protecting the rights of responsible law abiding Americans to own firearms of their choice.



Fruitful legislative avenues that might be explored include enhanced penalties for felonious use of firearms and national licensing of firearms owners along the lines of FAA licensing of pilots and state licensing of automobile operators.

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Dr. Ezell is presently employed as the Curator of the National Firearms Collection at the Smithsonian Institution's National Museum of American History and is a founding Director of the Institute for Research on Small Arms in International Security. The views presented in this testimony are solely Dr. Ezell's and presented as a professional scholar in the field. They do not reflect the views of the Smithsonian Institution or of the Institute for Research on Small Arms in International Security. Neither organization has a position on this topic.

TABLE 1

MURDER VICTIMS BY TYPE OF WEAPONS USED, 1983-1987


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|                                | <u>1983</u> | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>1987</u> |
|--------------------------------|-------------|-------------|-------------|-------------|-------------|
| <u>Total</u>                   | 18,673      | 17,260      | 17,545      | 19,257      | 17,859      |
| <u>Weapons</u>                 |             |             |             |             |             |
| Total Firearms                 | 10,895      | 10,175      | 10,296      | 11,381      | 10,556      |
| Handguns                       | 8,193       | 7,557       | 7,548       | 8,460       | 7,807       |
| Shotguns                       | 1,243       | 1,194       | 1,188       | 1,296       | 1,095       |
| Rifles                         | 831         | 785         | 810         | 788         | 772         |
| Other guns                     | 19          | 19          | 24          | 22          | 16          |
| Firearms; type<br>-not stated  | 609         | 620         | 726         | 815         | 866         |
| Cutting/stabbing<br>instrument | 4,075       | 3,653       | 3,694       | 3,957       | 3,619       |
| Blunt Objects                  | 1,062       | 1,007       | 972         | 1,099       | 1,039       |

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Source: U.S. Department of Justice, Federal Bureau of Investigation, Crime in the United States, Uniform Crime Reports, 1987. (Date of release 10 July 1988.)

TABLE 2

QUANTITIES OF SEMI-AUTOMATIC "ASSAULT RIFLES"  
OWNED IN THE UNITED STATES

RIFLES OF AMERICAN MANUFACTURE

|                                                             |         |                |
|-------------------------------------------------------------|---------|----------------|
| Colt AR-15 caliber .223 .....                               | to date | 279,600        |
| Springfield Armory Inc. M14A caliber .308 .....             | " "     | 60,000         |
| Springfield Armory Inc. R3 (Copy of HK91) caliber .308 .... | " "     | 1,000          |
| Springfield Armory Inc. FAL caliber .308 .....              | " "     | 6,000          |
| Springfield Armory Inc. BM59 caliber .308 .....             | " "     | 500            |
| Ruger Mini-14 caliber .30 .....                             | " "     | 500,000+       |
| Commercial and surplus US M1 .caliber .30 .....             | " "     | 700,000+       |
| US Government sales and GI souvenirs US M1 .caliber .30 ... | " "     | 1,500,000 est. |

RIFLES OF FOREIGN MANUFACTURE  
(IMPORTS)

|                                                             |     |        |
|-------------------------------------------------------------|-----|--------|
| China AK-type rifles caliber .223 and 7.62mm .....          | " " | 90,000 |
| China SKS w/ detachable magazine 7.62mm .....               | " " | 25,000 |
| Finland (Valmet) AK-type rifles caliber 7.62mm .....        | " " | 16,000 |
| Hungary AK-type rifles caliber 7.62mm .....                 | " " | 7,000  |
| Yugoslavia AK-type rifles caliber 7.62mm .....              | " " | 4,000  |
| Egyptian AK-type rifles .....                               | " " | 7,000  |
| Israel Galil .223 and .308 .....                            | " " | 9,000  |
| Israel M14 (built from surplus parts) .308 .....            | " " | 16,000 |
| Israel FAL (built from surplus parts -- Armscorp) .308 .... | " " | 3,000  |
| Argentina FAL (Armscorp) .308 .....                         | " " | 4,000  |
| FN FAL and FNC .308/.223 .....                              | " " | 25,000 |
| West Germany (HK91) caliber .308 .....                      | " " | 38,000 |
| West Germany (HK93) caliber .223 .....                      | " " | 8,510  |
| Beretta BM-59 caliber .308 .....                            | " " | 2,000  |
| Switzerland SIG 510 and SIG 550 caliber .308 and .223 ....  | " " | 1,000  |
| Austria Steyr AUG caliber .223 .....                        | " " | 5,000  |
| Korea K1 and K2 (Similar to AR-15) caliber .223 .....       | " " | 25,000 |
| Miscellaneous .....                                         | " " | 25,000 |

ESTIMATED TOTAL 3,342,610

Source: This table was compiled from queries made of major importers, manufacturers, and individuals involved in the wholesale and retail distribution of the above weapons.

TABLE 3

QUANTITIES OF SEMI-AUTOMATIC SUB-CARBINES  
(Firing pistol ammunition)  
OWNED IN THE UNITED STATES

SUB-CARBINES OF AMERICAN MANUFACTURE

|                                                                          |         |         |
|--------------------------------------------------------------------------|---------|---------|
| Marlin Camp Carbine caliber 9mm and .45 .....                            | to date | 3,000   |
| Volunteer and other makers "Commando" carbine caliber 9mm                |         |         |
| and .45 .....                                                            | " "     | 40,000+ |
| Cobray (SWD), RPB, MAC and other makers MAC10-type semiautos caliber 9mm |         |         |
| and .45 .....                                                            | " "     | 60,000+ |
| Intratec and Intertec TEC9 caliber 9mm .....                             | " "     | 110,000 |
| Numrich M1927A1 Thompson Semiautos caliber .45 .....                     | " "     | 16,000  |
| Miscellaneous: AP9 etc. ....                                             | " "     | 40,000  |

SUB-CARBINES OF FOREIGN MANUFACTURE  
(IMPORTS)

|                                                                 |     |        |
|-----------------------------------------------------------------|-----|--------|
| Israel Uzi (carbines and pistols) caliber 9mm and .45 .....     | " " | 90,000 |
| West Germany HK 94 caliber 9mm (30% sold to law enforcement) .. | " " | 16,200 |
| United Kingdom Sterling MK6 caliber 9mm .....                   | " " | 1,000  |
| Miscellaneous .....                                             | " " | 5,000  |

ESTIMATED TOTAL 401,200

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Source: This table was compiled from queries made of major importers, manufacturers, and individuals involved in the wholesale and retail distribution of the above weapons.

ASSAULT RIFLE FACT SHEET #1  
DEFINITIONS AND BACKGROUND

Recent discussions of so-called "assault rifles" in both the media and legislative arenas have seen imprecise usage of the terms used to describe such firearms. This fact sheet is designed to improve the technical accuracy of future discussions.

**ASSAULT RIFLE:** This term was coined during World War II. It is a translation of the German *Sturmgewehr*. Two key characteristics that identify "assault rifles" are full automatic fire and detachable magazines with a capacity of 20 or more cartridges. These weapons were designed to produce roughly aimed bursts of full automatic fire. While some assault rifles offer an option of semiautomatic fire (i.e., single-shot), all true assault rifles fire at least fully automatic.

**SELF-LOADING:** Weapons generally called semiautomatic today were originally called self-loading. This more precise term indicates that the fired cartridge provides energy to reload the weapon for the next shot. Such self-powered arms may be semiautomatic, full automatic, or have a means of selecting one or the other.

**SEMI-AUTOMATIC:** In such weapons, the operating mechanism is designed to permit only a single shot with each pull of the trigger.

**AUTOMATIC:** In such weapons, the operating mechanism is designed to permit the discharge of multiple shots with each pull of the trigger. Firing ceases when the shooter releases the trigger.

**BURST FIRE:** Multiple shots during automatic fire are called bursts. These can either be controlled by the shooter's manipulation of the trigger or by a mechanical device built into the weapon that interrupts the automatic cycle after a preset number of shots have been discharged; e.g., 3-shots or 5-shots.

Ownership of automatic and burst fire weapons has been regulated by Federal laws since the 1930s through revenue taxes enforced by the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms.



**RATE OF FIRE:** All automatic weapons have a theoretical cyclic rate of fire that is expressed in shots per minute (s.p.m.) or rounds per minute (r.p.m.). This is the rate of fire that would be attained if the weapon could be fired continuously without need for reloading. In actual practice the number of shots that can be delivered from any self-loading weapon is limited by shooter skill, especially the need to reload.

**PRACTICAL RATE OF FIRE:**

With weapons such as the military 5.56mm M16A1 rifle and the 7.62mm AKM rifle the maximum rates of fire for a well trained shooter are as follows:

|                | <u>M16A1</u>   | <u>AKM</u> |
|----------------|----------------|------------|
| Semiautomatic: | 45/65 s.p.m.   | 40 s.p.m.  |
| Automatic:     | 100/150 s.p.m. | 100 s.p.m. |

An average or less experienced shooter can deliver about half as many shots per minute. The shooter's probability of hitting a target with a self-loading rifle when pulling the trigger as rapidly as possible is about 1 hit in 5 shots fired.

**CATEGORIZING SELF-LOADING RIFLES BY CALIBER**

Modern military-type rifles (automatics and semiautomatics) are generally categorized by the class of cartridge they use.

- Full power rifle ammunition: This includes rifles such as the M14, FAL and G3 that shoot the 7.62 x 51mm NATO cartridge.
- Intermediate rifle ammunition: This includes rifles such as the Kalashnikov-type ("AK47") imported from China, Egypt, Hungary, Finland, and Yugoslavia that shoot the 7.62 x 39mm cartridge.
- Small caliber, high velocity rifle ammunition: This includes rifles such as the M16 series, the Mini-14, AUG and others that fire the 5.56 x 45mm cartridge.
- Weapons firing the US .30 Carbine cartridge: The US M2 carbine is an example of a firearm that shoots the relatively low power 7.62 x 33mm cartridge.

Semiautomatic variants of many of the world's automatic ("assault") rifles have been sold in the United States since the end of World War II. A majority of these sales occurred since the passage of the Federal "Gun Control Act of 1968." That law ban further importation of surplus military rifles, most of which were of the manually operated bolt-action-type. It is estimated that approximately four million semiautomatic variants of "assault rifles" are held by private individuals in the United States.

The vast majority of semiautomatic military style rifles sold in the United States are military rifles that have been specifically modified to permit only semiautomatic fire and to thwart easy conversion to automatic fire. These modifications must be made in compliance with Bureau of Alcohol, Tobacco and Firearms guidelines, and they must be approved by BATF prior to importation and/or sale of the firearm in the United States.

#### ADDITIONAL READING ABOUT ASSAULT RIFLES

Edward C. Ezell, Small Arms Today: Latest Reports on the World's Small Arms (Stackpole Books, 1988).

A country-by-country review of infantry weapons (25mm or smaller in caliber) usage. The types of weapons are described, and data is presented on the origin of such weapons. Many supplier-client relationships are explained. This book grows out of a continuing interest in the transfer of small arms by the nations manufacturing such weapons.

R. Blake Stevens and Edward C. Ezell, The Black Rifle: M16 Rifle Retrospective (Collector Grade Publications, Inc.: Toronto, 1987).

A history of the development and production of the M16 rifle.

Edward C. Ezell, The AK47 Story: Evolution of the Kalashnikov Weapons (Stackpole Books, 1986).

Narrative history of military rifles in Russia and the Soviet Union, 1800 to present. Describes world wide production of Kalashnikov assault rifles.

, The Great Rifle Controversy: Search for the Ultimate Infantry Rifle from World War II to Vietnam and Beyond (Stackpole Books, 1984).

Narrative history examining issues related to US and NATO small arms research, development and acquisition from 1945 to 1984, concentrating on the history of the M14 rifle and M16 rifle development programs.

Small Arms of the World: A Basic Manual of Small Arms, 12th edition (Stackpole Books, 1983).

The first five chapters of this encyclopedia summarize the development of small arms from 1945 to 1983.

Senator SIMON. If I may ask you, Dr. Ezell, Senator Metzbaum's bill has a 14-day waiting period. You talked about examining the background. Would you favor the waiting period portion of the legislation?

Mr. EZELL. Well, actually, I would propose something even more than that, which will probably upset a number of people. I do not see any reason why we shouldn't license firearms owners the way we do operators of automobiles and airplanes.

You don't allow people to go out and operate automobiles, which are deadly if operated improperly, and you don't let people fly around in airplanes unless they have passed a certain level of competence and knowledge. And I don't see any reason why that wouldn't be a potential solution.

Senator SIMON. I assume you are not speaking for the National Rifle Association.

Mr. EZELL. No, I am not. I fear we might be in some disagreement on that. The point is that the basic, bottom-line issue here is the personal responsibility on the part of the person possessing firearms, and we must hold people accountable.

In another aspect of life we have decided that we will not permit people to drink and drive. We should not permit people to misuse firearms. It is the same type of issue. We do not ban pickup trucks because they are the prevalent vehicle used in killing people on highways by drunk drivers. We put drunk drivers in jail. I think there is a very good analogy there and one that might be fruitfully pursued.

Senator SIMON. Thank you.

Officer Trahin, you mentioned a 1-year survey where 3 percent of the guns seized were the assault weapons. What year was that?

Mr. TRAHIN. It was the year past; that would be approximately January 1989 and 1 year prior to that.

Senator SIMON. OK. You just heard Dr. Roberts testify about how this has grown, this use. Do you think a survey 1 year from now will show a higher than 3-percent use?

Mr. TRAHIN. Oh, definitely, definitely. We have already seen it in the past 3 months. Because of the publicity regarding assault weapons, the prices of weapons in Los Angeles, especially since we have a local ordinance now, has doubled and tripled. And it is the public demand for them now, because it wasn't that popular until the media has got this going.

Senator SIMON. The Los Angeles Police Protective League has come out in favor of legislation along this line, the union representing the Los Angeles police. Do they speak for the majority, do you think, of patrolmen?

Mr. TRAHIN. No, and I am not aware that they have officially come out now. If they have come out, I am not aware of it. But if they have, they speak for approximately 12 delegates. No one has asked the rank-and-file that I am aware of. We have not had any surveys where they have asked the average cop's opinion.

Senator SIMON. We do have a letter from them that we will enter in the record here.

[Information follows:]

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COMPRSED OF  
THE POLICE OFFICERS  
OF THE CITY  
OF LOS ANGELES

## LOS ANGELES POLICE PROTECTIVE LEAGUE

800 EAST EIGHTH STREET  
LOS ANGELES, CALIFORNIA 90014  
TELEPHONE (213) 526-5341

## BOARD OF DIRECTORS

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May 4, 1989

Senator Howard Metzenbaum  
SR 140 Russell Senate Office Building  
Washington, D. C. 20510

Dear Senator Metzenbaum:

In response to your inquiry, the Los Angeles Police Protective League supports legislation that would control sales and possession of assault type semi-automatic weapons not only in California but on the federal level as well.

As active members of the National Association of Police Organizations (NAPO), we have supported S386 through our NAPO representative and Vice President William Pattison who has testified before the Senate Judiciary Subcommittee on the Constitution. Our Chief of Police, Daryl F. Gates, has also testified as to the need for federal control of semi-automatic assault weapons before the same committee.

We appreciate your efforts to de-escalate the level of violence in our country and to provide law enforcement officers the support they need in providing a safer America for all of our people.

Very truly yours,

LT. GEORGE V. ALIANO  
President

GVA:ega

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Senator SIMON. In questioning the chief of police of Los Angeles, he was talking about innocent bystanders being killed in gangland shootings. I asked him if, instead of these semiautomatic weapons, they had the more conventional arms, would that number of innocent victims be down appreciably. And Chief Daryl Gates said in response, I don't think there is any question about it.

Do you disagree with your chief of police on that?

Mr. TRAHIN. Well, first of all, let me say that I agree with Chief Gates and I always support him in matters which attempt to solve this problem, and I see that we have a problem. There is no question we have a problem.

However, a statement such as that does not take into account, for example, the typical shotguns or handguns that are being used. The typical gun that we are getting in today—and this is, again, from the 1968 Gun Control Act, a void that was filled—we are now getting high-capacity, 9-mm handguns.

And it is actually easier to hang out a 15- to 17-round Sig-Sauer or Smith and Wesson or Beretta out the window and do the same type of firing and damage than one of these Uzis here.

Senator SIMON. So that when we were talking about limiting a magazine to five bullets, would you favor that?

Mr. TRAHIN. Limiting it to five bullets? No, sir, but you bring up a good point. The problem you are going to see, and I have seen since I have worked this unit for over a decade-and-a-half now, is that when you start banning these things like this, you are going to have a void to fill, and the void that is going to fill is to start having shotguns, high-capacity—whether, in fact, high-capacity or not, you are going to have a higher use of shotguns being involved, which are more deadly than these assault-type weapons. The effect of No. 7.5, No. 8 shot being used in three-, four-, five-round-shot magazine shotguns is extremely deadly.

You also see—I have just basically looked over your proposals here, your legislation. For example, you have left the M-1 carbine out, and I can see why, since we have millions of these things in circulation.

You all of a sudden will find the M-1 carbine being used. So, then, you are going to have to add the M-1 carbine to this configuration, and you are going to have a lot of problems there because you have millions of people who are in possession of these M-1 carbines.

So, every time you take something away, the void is going to be filled with something else.

Senator SIMON. Senator Specter.

Senator SPECTER. Thank you very much, Mr. Chairman.

Detective Trahin, your disagreement with Chief Gates might be worth just a little amplification. You do work in the same police department?

Mr. TRAHIN. That is correct.

Senator SPECTER. Have you ever discussed the issue of the so-called attack weapons with Chief Gates?

Mr. TRAHIN. No; he has not asked our opinion on that.

Senator SPECTER. What is your specific duty function with respect to expertise on weapons on the department?



Mr. TRAHIN. My responsibility is the scientific analysis of all firearms-related evidence that comes in to the custody of the police department. I am sort of a recognized expert on machinegun conversions on these types of weapons.

Senator SPECTER. How many people are in your unit?

Mr. TRAHIN. There are nine of us in our unit.

Senator SPECTER. Are you the chief?

Mr. TRAHIN. I am the head training officer, yes.

Senator SPECTER. The head training officer?

Mr. TRAHIN. Yes.

Senator SPECTER. Would it be fair to categorize your experience as the most extensive on weapons of this type in the Los Angeles Police Department?

Mr. TRAHIN. Yes.

Senator SPECTER. You testified that you had examined the impact on court proceedings on some 400-and-some cases?

Mr. TRAHIN. No, sir; I said that I have testified in excess of 400 times in cases dealing with firearms-related cases, and I have not seen the enhancement laws being utilized in those cases.

Senator SPECTER. Well, in the course of that testimony, what kind of weapons were you dealing with, if you can generalize?

Mr. TRAHIN. Basically, shotguns, rifles, and the vast majority are handguns.

Senator SPECTER. And what are the provisions of California law on enhancement?

Mr. TRAHIN. I do not have the specific ones here, but basically it has to do with the weapon being used with narcotics, involved in felony, and so on, and there are 2-, 3-, 4-, 5-year increments supposedly added to the use of such a firearm.

Senator SPECTER. Your basic point is that the enhancement provisions are not put into effect by the courts in the jurisdiction where you work?

Mr. TRAHIN. Definitely not. Even the cases that I have worked on with the so-called assault weapons being converted to machineguns where I have gone two and three times to a case where the same individual had been converting these things, he received probation or the charge was plea-bargained away and they capitalized on the narcotics violation, for example.

Senator SPECTER. Has there been any shift in the sentencing practices on enhancement or sentencing practices generally after the Stockton incident?

Mr. TRAHIN. I couldn't answer that with any—

Senator SPECTER. Have you been in court in the course of the past 2 months?

Mr. TRAHIN. Yes, but I have not paid any attention one way or the other whether these have been used or not.

Senator SPECTER. Lieutenant Trahin, you testified that there has been no effect on crime in Los Angeles since the assault weapon ban. Could you describe with particularity just what that ban has amounted to?

Mr. TRAHIN. Basically, it is all center-fire type semiautomatic weapons that have the capability of accepting a 20-round or more magazine. Basically, it is banning these so-called weapons in front of you.

Senator SPECTER. So, they are dealing with a 20-round magazine or more?

Mr. TRAHIN. Yes; it has to be exceeding 20 rounds.

Senator SPECTER. You can still have a weapon which has 19 rounds in a magazine?

Mr. TRAHIN. That is correct. However, the key word there is, is the weapon capable of accepting a magazine greater than that. In other words, the gun may be able to only have a 10-round magazine, but if the gun—or if there is some after-market magazine capable of accepting 20 rounds, then that gun, in fact, is banned, too.

Senator SPECTER. Do you know why they selected the capability of 20 rounds?

Mr. TRAHIN. No; we were not asked when that ordinance was passed or written.

Senator SPECTER. How long has that ordinance been in effect?

Mr. TRAHIN. Since February of this year.

Senator SPECTER. Do you think there has been an adequate length of time to have a realistic chance for the ordinance to show an effect one way or another on crime in Los Angeles?

Mr. TRAHIN. No, no. I would say it would take a good year before we will really know.

Senator SPECTER. Officer Pyle, you testify in very flat, unequivocal terms that you don't think a ban on assault weapons or a ban on weapons of any sort would have any significant impact on crime in this country. Why do you feel that way?

There are many who would say, and there have been other police officers who have testified in these proceedings, that if you rid the country of these kinds of weapons, it will have an impact on the availability of guns in the hands of criminals. Why do you testify so strongly to the contrary?

Mr. PYLE. Because as long as I have been a police officer, the people who have been violating the law, the ones who have been killing police officers, they are doing that in violation of laws that prohibit the taking of a police officer's life, and I don't think that the person who would violate that law prohibiting the taking of a police officer's life would follow a law that says you can't have the weapon to use for taking that life.

Senator SPECTER. How would you respond to the testimony that if the guns are available, it is easier to get them; if they are not so readily available, people are less likely—the criminals are less likely to have them?

Mr. PYLE. No; the criminal would have it available—it has been my experience that he can have anything he wants. It is only the honest citizen that you would be affecting, and that is one of my concerns is that this type of legislation—when a police chief comes up and represents himself as the police, he is actually driving a wedge between the relationship between policemen, real policemen who actually live and work in the community and deal with these people—driving a wedge between them and over the half the households that have the firearms.

So, I think it is unfair that the police administrator is representing himself as a police officer. It is not necessarily true.

Senator SPECTER. Dr. Ezell, you are obvious expert in the field, have written prolifically. Would you have any suggestions as to

how we might make a functional definition which would separate out the so-called assault weapons from the semiautomatic hunting rifle or target practice rifle?

Mr. EZELL. I think it is a virtual impossibility, and I think what you are headed toward is eventually having to include all self-loading rifles or self-loading, what I would call automatic carbines, like the Uzi and the Tec-9.

Senator SPECTER. When you use the words "virtual impossibility," that perks my attention. Is there——

Mr. EZELL. Well, I hesitate to——

Senator SPECTER. Well, let me finish the question.

Mr. EZELL. Certainly.

Senator SPECTER. Is there some hope of finding a definition, because you are a scientist and when you use the word "virtual," I know you use that word, as the rest of your words, with care?

Is there any hope at all of finding a definition which would sort out semiautomatic rifles from the attack weapons?

Mr. EZELL. Well, if you are going to press me on it, then I will become more categorical and say that it is impossible. You have your Remington up here, which is acknowledged to be a sporting rifle, a hunting rifle.

For that particular rifle there is an after-market 10-shot magazine. It is used by police organizations most frequently in prison situations. There is no reason why a 20-shot magazine cannot be made for that particular weapon, and it is just as sturdy, just as durable as the AK. In fact, with its machine steel receiver, it is probably better than some of the stamped-steel AK's that are out on the market.

So, I think you are going to have go either for it all or for nothing, because you will be determining in effect how many angels can dance on the head of a pin. It becomes a metaphysical question, not a practical, scientific question.

Senator SPECTER. I believe you gentlemen were in the room when a prior panel of officers testified about the impact of having a limitation on the magazines. What is your view as to the realistic possibility of that having a significant impact on the problem? Stated differently, would you favor any such limitation?

Mr. EZELL. Again, from a practical standpoint, I think it is virtually impossible. There are millions of magazines out there and there are millions more waiting in the wings, so it is going to be very difficult to control this. I think for ATF this is going to be an enforcement nightmare.

Senator SPECTER. Well, aside from the difficulty and practicability of enforcement, which I can appreciate, if you had a limitation, whether the magic number was 5 or 9 or 19, would you think that would significantly address the problem?

Mr. EZELL. No, I don't think it will. If you go to five, then you include all the M-1 rifles that have ever been sold by the Federal Government to its citizens, about 1.5 million guns. No; you just exacerbate your problem.

Senator SPECTER. Thank you very much. Thank you very much, gentlemen.

Senator METZENBAUM [presiding]. Thank you, Senator Specter.

Gentlemen, am I correct in assuming that none of you are gun dealers, and that you are not here on behalf of the NRA or they are paying your expenses or anything? Is that correct?

Mr. EZELL. That is true, yes.

Mr. TRAHIN. That is correct for me, yes, sir.

Senator METZENBAUM. Pardon?

Mr. TRAHIN. That is correct.

Mr. PYLE. Yes, sir, that is correct.

Senator METZENBAUM. And that is both with respect to being gun dealers or being here on behalf of the NRA?

Mr. TRAHIN. Yes.

Mr. PYLE. Yes.

Senator METZENBAUM. Well, first, I want to say to both of you—and I don't mean this to be derogatory, but I mean because you are police officers, I commend you on coming forward to express your views, in spite of the fact that the organizations and the chiefs of your departments are supportive of our legislation. I think it takes a good deal of courage and I commend you for that, and I not only commend you for it, I respect you for it because I would be very much opposed to there being any limitation as to your right to express your own personal views.

Let me say to you, Detective Trahin, that you had said something about the limited number of assault weapons that have been picked up, I think, in the Los Angeles area. I am informed that of the 835 machineguns confiscated in 1988 by BATF for criminal misuse, 434 were semiautomatic assault weapons which had been converted to fully automatic weapons.

So, it would appear that there is a problem with the semiautomatics, which then in turn can be converted to automatics.

Mr. TRAHIN. OK. Could you repeat those statistics again? You said 835 assault-type weapons that were taken in?

Senator METZENBAUM. Yes; as you know, fully automatic weapons are banned by Federal law.

Mr. TRAHIN. Yes.

Senator METZENBAUM. And the BATF confiscated 835 machineguns for criminal misuse. Of that amount, 434, or a little bit more than half, were semiautomatic assault weapons which had been converted to fully automatic.

Mr. TRAHIN. Oh, I see. You are saying that out of the 800 guns that were machineguns, 400 of them were assault-type weapons.

Senator METZENBAUM. Yes.

Mr. TRAHIN. Yes; the majority of them are convertible, or should I say that the ones that are machineguns, have been converted to machineguns, are the assault weapons. We do get other sporting-type guns that have been converted, but the majority is the assault type.

Senator METZENBAUM. Detective Trahin and Officer Pyle, I think you both appeared on NRA video productions, is that correct?

Mr. PYLE. That is correct.

Mr. TRAHIN. I believe I have. I haven't actually seen it yet. I was told that I gave a—I did testify in Sacramento, and I suppose my testimony was put in that.

Senator METZENBAUM. I heard that you came through well and you acquitted yourself very excellently, and I don't say that in a



derogatory way, but I just did want to put in the record that you have done some commercials for NRA, which is perfectly within your legitimate rights, as well as their legitimate rights.

Have either of you discussed your testimony today with the NRA prior to appearing?

Mr. PYLE. When I was told on very short notice that I had to have 70 copies 48 hours in advance, a longtime friend of mine from California who now works at the NRA—I asked him if I could FAX him my testimony and have him make the copies, and he agreed to. So, unless they failed to peek at it, it might have been perused.

Senator METZENBAUM. I would say that was smart. I think they had the wherewithal and the capacity to do it, and I certainly find no fault with that.

Mr. TRAHIN. Likewise, sir, I have not received any discussion or had any discussion with the NRA regarding my testimony here today.

Senator METZENBAUM. Do either of you personally favor repealing the ban on the sale of new automatic weapons—or all three of you—enacted in 1986?

Mr. PYLE. On fully automatic weapons?

Senator METZENBAUM. Yes.

Mr. PYLE. No, I don't.

Senator METZENBAUM. Detective Trahin?

Mr. TRAHIN. The total ban of the production——

Senator METZENBAUM. Of the sale of machine guns, really, automatic weapons.

Mr. TRAHIN. Are we talking about the McClure-Volkmer Act?

Senator METZENBAUM. Yes.

Mr. TRAHIN. That dealt specifically with the stopping of the manufacture of machineguns.

Senator METZENBAUM. Yes.

Mr. TRAHIN. No, I don't agree with that.

Senator METZENBAUM. You don't agree with that?

Mr. TRAHIN. No.

Senator METZENBAUM. Dr. Ezell?

Mr. EZELL. I would say only to the extent that it might impinge on national security research and development, but with that exception, I don't object to that ban, no.

Senator METZENBAUM. Detective Trahin, since you were the one who would disagree with that, why do you think we ought to be continuing to manufacture machineguns?

Mr. TRAHIN. I hate to put a total ban on anything. It seems like when we put an absolute ban, we create more problems than it does any good. The possession of machineguns—right now, the illegal possession of weapons that are registered has never caused a problem in the United States.

In fact, I am not aware of any criminal act involving the use of any registered machinegun. Therefore, we are now trying to implement a solution to a problem that doesn't exist, and I hate to see that occur.

Senator METZENBAUM. Detective Trahin, am I correct in my understanding that you did make the following statement in a 1985 video made for the Los Angeles Police Department in a firearm conversion demonstration:



The AR-15 is one of the most common weapons utilized today for fully automatic conversion. The MAC-10 is probably the most converted weapon we get out here on the street. It requires less than 30 seconds to convert some of these semiautomatic type MAC weapons to fully automatic mode. The Uzi is also readily converted to fully automatic.

Is there some inconsistency with your statement today and the statement you made at that time?

Mr. TRAHIN. No, sir. If you will recall, my statement today is that those three weapons are the most readily convertible and were readily convertible in the past. However, since the McClure-Volkmer Act, the majority of those weapons dealt with the conversion parts, excluding the MAC, which is no longer being produced. We will probably be seeing a decrease in such weapons being converted.

Senator METZENBAUM. Dr. Ezell, I think you made this clear. You are speaking on behalf of yourself?

Mr. EZELL. That is correct.

Senator METZENBAUM. I have no further questions, unless you do, Senator Specter.

Senator SPECTER. No; I think that covers it comprehensively.

Senator METZENBAUM. I want to thank you very much for being with us. This meeting stands adjourned.

[Whereupon, at 1 p.m., the subcommittee was adjourned.]

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

**Police Officers Association****Joliet Police Department**

150 W. Jefferson Street  
Joliet, Ill. 60431

April 7, 1989

The Honorable Paul Simon  
462 Dirksen Senate Building  
United States Senate  
Washington, D.C. 20510

Dear Senator Simon:

I have been a Joliet police officer for over twenty-one years. During that time, I have seen first hand the tragedies caused by the proliferation of firearms in our nation.

When I first became a police officer, a "man with a gun" or "shots fired" call in Joliet was unusual. Now these types of calls have become common. This city has been faced with an escalating gang problem. The criminal used to be poorly armed. Now we are taking well-made 9mm semi-automatic pistols off the street. It is just a matter of time before we are opposed by automatic weapons with superior fire-power.

It is for this reason that I am urging you to vote in favor of "The Assault Weapon Control Act of 1989," S. 386. I believe the survival of police officers in the future may literally depend on the elimination of AK-47's, UZI's and similar weapons.

Please vote in favor of this bill in order to take these military weapons off the market. I would appreciate hearing your position on this matter. Thank you.

Sincerely,

*Nicholas W. Weiss*  
Lieutenant Nicholas W. Weiss  
Chairman

**Anti-Defamation League**  **ADL of B'nai B'rith**  
 Washington, D.C. Office

JESS M. HORDEN  
 Director

May 5, 1989

Honorable Paul Simon  
 U.S. Senate  
 Washington D.C. 20510

Dear Senator Simon:

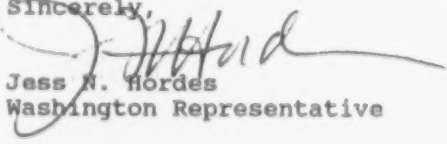
The Anti-Defamation League of B'nai B'rith welcomes and supports S. 386, legislation to restrict the importation and distribution of semi-automatic assault weapons. This bill, introduced by Senator Metzenbaum, has widespread support in the law-enforcement community and constitutes an important and necessary step that must be taken to control and reduce the unlawful use of these high-powered military type weapons in everyday street crimes as well as by organized hate groups.

The ADL has played a national leadership role over the past seven decades in monitoring, exposing and countering the activities of organized hate groups in America. These extremist groups have often demonstrated a marked propensity for violence and lawlessness. Many of these groups have come to regard violent confrontation as not merely acceptable, but as inevitable.

In recent years, federal and state law enforcement officials have conducted raids of hate group compounds in several different parts of the country, seizing very large quantities of semi-automatic assault weapons, stockpiled ammunition, and explosives from anti-Semitic and racist groups like the Posse Comitatus, the Order, and the Covenant, the Sword, and the Arm of the Lord. The murder of Jewish Denver radio talk show host Alan Berg was carried out by members of the Order with an assault weapon that would be banned under this bill.

The ADL, which has been in the forefront of the struggle against extremist groups, hate violence, and paramilitary training camps, believes passage of this bill will contribute greatly towards a safer society for all Americans. We therefore urge your strong support for this important legislation.

Sincerely,

  
 Jess M. Horden  
 Washington Representative



609 East College Street  
P.O. Box 2047  
Carbondale, Illinois 62902-2047  
Phone 618-549-5302

May 15, 1989

Senator Paul Simon  
Constitution Sub-Committee  
524 Dirksen Building  
Washington, DC

Dear Senator Simon:

Guns and their use, unquestionably is one of the most controversial and arguable subjects in America today. Data gathered by researchers on both sides of the argument reflects the dilemma. Most of us can agree that some weapons which are designed for the sport of hunting, skill practice, or competitive shooting in controlled conditions in almost every instance is acceptable. How easily the weapons being used are obtained may be the significant question.

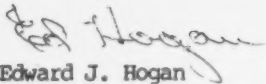
With few exceptions, guns may be purchased over the counter in most states with less identification or background information than it takes to cash a check or open a bank account or drive an automobile. With the advent of the sale of exotic semi-automatic weapons, (uzi's, mac 10's, military assault rifles, etc., to name a few) which frequently may be converted very simply to fire fully automatic, we have elevated the possibility and probability of killing more human beings to a new threshold! The proclivity of Americans toward faster, larger, technically sounder weapons may be important to sportsmen and hunters, but conversely they are a cause for consternation for the men and women who are charged with maintaining the peace and protecting life and property. Law enforcement must not only deal with the carnage caused by the proliferation of available guns in this country, we must also devise methods and systems to defend against this growing arsenal.

With existing law, weapons maybe easily procured by anyone, anytime, or any place. Weapons should be difficult to obtain. Waiting periods permitting extensive background investigations including mental stability and other criteria must be required and a weapons owner identification card, with photo, are the minimum we should expect.

Ideally, but totally unexpected, a 25 year moratorium on the manufacture of handguns including semi-automatic weapons except for those purchased for the military or law enforcement. There are just too damn many weapons of the streets of America and the number increases daily and with this increase is coupled the increase of injured and killed humans, adult and child. Please do what is necessary to abate this lethal situation.

Thank you for your time and consideration.

Sincerely,



Edward J. Hogan  
Chief of Police

EJH/ld



AN ANALYSIS OF ISSUES RELATING TO CONTEMPLATED BANS ON  
SEMI-AUTOMATIC FIREARMS

---

BILL NORTON, C.P.A., P.C.  
770 OLD ROSWELL ROAD, UNIT 1-200  
ROSWELL, GEORGIA 30076  
(404) 998-7005

FORWARD

Both houses of Congress are considering legislation which would ban or restrict the ownership, use, possession, and transfer of a wide range of semi-automatic rifles, pistols, and shotguns. I wish to offer my analysis of this pending legislation. It will be both brief and objective. Every position set forth will be both factual and verifiable. I respectfully request that it be read into the record. I will happily appear before Congress or the Bureau of Alcohol, Tobacco, and Firearms to offer testimony. I would accept appointment to any Treasury or Congressional panel to consider these issues. I do not address you on behalf of any organization, but I am not one voice. I speak for the seventy million Americans who lawfully own and use firearms.

Bill Norton

*Bill Norton*

April 27, 1989

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April 27, 1989

#### Private Ownership of Firearms

The right to keep and bear arms is a constitutional guaranty. It is not a license nor is it a privilege. Neither Congress nor any federal agency has the right or the power to abridge the Constitution, a fact affirmed by the oath of office. I am student of the Constitution, not a scholar. From my studies, several immutable facts emerge. One express intent of the Second Amendment was to create an unorganized militia. Its primary role was not to defend against invading armies, but to resist an oppressive dictator. We, as citizens, need not demonstrate that any particular firearm qualifies for that use.

Viewed from a legislative perspective, sec 101 of Title I of the Gun Control Act of 1968 states..."it is not the purpose... to place any undue or unnecessary federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to... any lawful activity..." Those of us who cherish personal liberty will simply not tolerate any diminishment of those rights.

#### Crime

The focus is crime. The failure is the criminal justice system. The issue is not the ownership of guns. I do not patronize you as I assert that criminals obey no laws. They do not lawfully acquire, use, possess, or transfer firearms. They do not obey existing laws nor will they obey new law. The impact of any legislation banning any firearm will be to deprive law-abiding citizens of guns for sport or personal defense. In that scenario, only the criminals would be armed; clearly, that cannot be.

#### Registration

Registration is not an appropriate solution to the problem. Lawfully acquired and possessed guns can be traced with existing law and regulation. Registration would impact only the law-abiding. It could only serve as a basis for confiscation. It cannot be permitted.

#### Waiting Periods

Waiting periods are inappropriate solutions. I cite the failure of California's fifteen-day waiting period as it applied to Patrick Purdy. Purdy was the killer of five school children in Stockton California in January of 1989. Purdy applied to a retailer to purchase a 9mm hand gun which he subsequently carried onto the school yard, although it was not his offensive weapon. He passed the records check because he had no felony convictions. He had been arrested for multiple felonies- drugs, violations of firearms law, and sex offenses- but all charges were plea-bargained to misdemeanors. The lenient criminal justice system in California permitted a career criminal to pass the record check because it did not hold him accountable for his actions.

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As an unrelated issue to the Purdy failure, the impact would again rest on the law-abiding. It would not hamper criminal activity. The objective of controlling crime would not be served.

#### Ballistic Notes

Offered on an informational basis, I wish to share with you the ballistic characteristics of selected cartridges.

The model 94 Winchester is a lever action carbine. It has probably appeared in every western ever televised. It is chambered for a cartridge called the .30-30; it propels a 150 grain bullet at approximately 2400 feet per second.

The poly tech AKS, which is the semi-automatic version of the AK-47, is chambered for a cartridge called the 7.62 x 39. It propels a 124 grain bullet at approximately 2400 feet per second.

Ballistically, these two cartridges are almost twins. An hysterical and uninformed media decries the 7.62 x 39 as a death ray, yet it is a minor-caliber rifle cartridge.

As to pistol cartridges, the 9mm is commercially loaded to propel a 115 grain bullet at approximately 1200 feet per second. It generates approximately 340 ft/lbs of kinetic energy at the muzzle. By way of contrast, the .30-30 earlier cited generates approximately 1900 ft/lbs of energy at the muzzle. The 9mm is a minor-caliber pistol cartridge not well suited for any role, whether sport, personal defense, law enforcement, or military application. The dreaded UZI is chambered for this relatively anemic cartridge.

#### Firearms Function

An assault rifle is defined as a weapon, intended primarily for military use, which is capable of fully-automatic fire. Congressman Berman and Senator Metzenbaum have introduced companion bills which seek to embrace semi-automatic sporting arms within the definition of assault rifles, and outlaw them.

First, I offer to produce and make available to you, a video tape which demonstrates the functional characteristics and capabilities of semi-automatic rifles, pistols and shotguns.

Secondly, as an interim explanation, a semi-automatic firearm is simply one that, for each stroke of the trigger, fires one round, ejects the empty case, chambers a fresh cartridge, and cocks the hammer. One stroke, one shot-no more, no less. That functional technology is about 100 years old.

I shoot handguns competitively. My match-grade colt .45 accepts a detachable, box magazine. The legislation pending clearly and carefully would recharacterize my match pistol as an assault weapon. It would be banned. My failure to surrender it would make

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me a felon punishable by ten years imprisonment? Surely, both rational thought and liberty will prevail and this ill-conceived legislation will be defeated.

#### Banning Firearms by Type

No such ban is appropriate. As assistant secretary Conroy of the Bureau of Alcohol, Tobacco and Firearms testified, there is no functional difference between sporting arms and those firearms which the sponsors of this legislation would define as assault weapons. The instrument has no will, it cannot be held accountable. Any ban on any type of firearm would deny law-abiding citizens use and ownership and would not affect criminals. Additionally, any ban, by its nature, would be artificial and discriminatory, and could only serve as a basis to expand the ban to embrace other similar firearms. We, the law-abiding majority, will not tolerate any such ban.

#### Conclusion

This analysis is not intended to be exhaustive. I have earlier expressed my willingness to participate at any level you wish. I reaffirm that commitment now.

It is my hope that this analysis was both informative and insightful. Offered in summary, any ban as to function or capacity is ill-conceived. Criminals will be unaffected, and law-abiding citizens would be deprived both of their firearms and fundamental rights. The focus must be criminal justice. It must be swift and certain.

I speak for the lawful majority when I urge you to redirect your efforts. To uphold our rights and cherished personal liberties can be accomplished while forcefully addressing the issue of criminality. That truly is the will of the people.

Sincerely,

*Bill Norton*

Bill Norton

BN/jmd

SUPPLEMENTAL TESTIMONY

OF

JAMES J. BAKER

SUBMITTED ON BEHALF OF

THE NATIONAL RIFLE ASSOCIATION OF AMERICA

ON S. 386, S. 747, AND S. 386 SUBSTITUTE

SUBCOMMITTEE ON THE CONSTITUTION

SENATE JUDICIARY COMMITTEE

MAY 5, 1989



S. 386--AMERICA'S FIRST BAN  
ON SPORTING SEMIAUTOMATIC FIREARMS

"I'm sick of . . . the right to bear arms," explained Mr. Hanlon, a chief witness for S. 386 at the hearing on February 10, before the Subcommittee on the Constitution, Senate Judiciary Committee. Indeed, S. 386 amounts to a declaration of war against the Second Amendment and the rest of the Bill of Rights. S. 386 is an outright ban on possession of perhaps half of the firearms in America today.

Section 1, designating the bill as the "Assault Weapon Control Act," is itself based on deceitful linguistics. This bill would ban most semiautomatic firearms, yet, as both DOD and BATF recognize, an "assault rifle" means a rifle which is selective fire, i.e., may be selected to fire fully automatically, and thus is a machinegun. "Assault rifles are . . . selective-fire weapons," states the DOD manual in a discussion of the AK-47. (Small Arms Identification and Operations Guide, p. 105 (1980)). In a letter dated Sept. 30, 1986, ATF Assistant Secretary J. Michael Hudson stated that "the term 'assault rifle' covers a category of military-type weapons which . . . have selective fire capability. . . . The U.S. M-16 rifle is a common example of an 'assault rifle.'" By contrast, an AR-15 semiautomatic Sporter rifle is not an "assault rifle," but is the very type of rifle S. 386 would ban.

Section 2 makes it unlawful to transfer, transport, receive, or possess an "assault weapon." There is a grandfather clause to exempt a "transfer or possession"--but not transportation or receipt--of such a weapon lawfully possessed before enactment. This is a freeze with the current owner in his home, for he may not transport the gun and a transferee may not receive it.

Also banned is any "large-capacity detachable magazine" or ammunition belt which can be used on a semiautomatic. An exception is made for possession (but not transfer) of any magazine lawfully possessed before enactment. All such magazines will die with the owner.

Section 3 defines as "assault weapon" all firearms designated as such "and all other semi-automatic firearms which are determined by the Secretary of the Treasury, in consultation with the Attorney General" as such. The bill provides no standards to guide the Secretary, who could thereby ban any firearm. This is an unprecedented departure from the only provision in existing law where the Secretary must classify firearms, i.e., Sec. 925(d)(3), which requires the Secretary to approve import of any firearm "generally recognized [i.e., by sportsmen, not bureaucrats] as particularly suitable for or readily adaptable to sporting purposes."

The prohibited list includes all firearms with certain names and any which are "substantially identical"--a vague term which provides no notice to the public, members of which are subject to felony prosecution. The list includes several imports which BATF

has approved as "generally recognized as particularly suitable for or readily adaptable to sporting purposes"--the Kalashnikov, Uzi, Beretta, FN-FAL, and Steyr semiautomatics. The list also names domestic rifles widely used for hunting and competitive matches, such as the Mini 14 and AR-15 Sporter.

The list generally prohibits "any other semi-automatic firearm [i.e., rifle or pistol] with a fixed magazine capacity exceeding ten rounds"; and any shotgun with revolving cylinders or with a fixed magazine or drum capacity exceeding six rounds. This would include numerous firearms made domestically or imported for decades as sporting. It also ignores that ammunition for many firearms may vary in length and thereby change magazine capacity--e.g., more .22 short rounds can be loaded than .22 long rifle rounds, and more 2 1/2" or 2 3/4" shotshells may be loaded than 3" or 3 1/2" shells.

A "large-capacity magazine" is one that holds more than ten rounds, and any magazine which can be "readily converted" into one. Many box magazines could be easily converted by simply lengthening the floorplate. "Semi-automatic" is defined as a firearm which shoots two or more rounds by pulling the trigger "without additional slide, bolt or other manual action."

Section 4 provides that the Secretary shall designate which firearms are assault weapons. No notice and comment from the public is called for. Nor must the Secretary use any "generally recognized" standard such as now exists for imports of sporting firearms under Sec. 925(d)(3). One bureaucrat could make all the

decisions and his superiors would back him up.

The Secretary is required "to publish" the list and to make it "widely available," but lack of actual notice is not a defense to a felony conviction. Thus, one is subject to felony conviction based on administrative decisions not in the U.S. Code or even required to be promulgated as regulations.

By contrast, items on the U.S. Munitions List and regulated by the Arms Export Control Act are published in the Federal Register, where it is subject to notice and comment, and then in the Code of Federal Regulations. Conviction for unlawful import or export of an item named in a published regulation on the Munitions List, even though some items are infinitely more dangerous than a mere semiautomatic firearm, must be proven to be a "willful violation." 22 U.S.C. Sec. 2778(c). By contrast, any list of semiautomatics which BATF decides to ban need not be published as regulations, and failure to register them under the National Firearms Act (see below) need not be "willful" or even "knowing." The courts have almost consistently upheld NFA violations regardless of whether the defendant knew the nature of the firearm he possessed.

Section 4 also includes a list of firearms which shall not be designated as assault weapons. These include bolt actions, lever actions, and slide actions. Also included is "a rimfire weapon that employs a tubular magazine" holding six rounds or less -- meaning that the Browning .22 semiautomatic rifle can be an "assault weapon." Another exemption is a firearm which

"cannot employ a detachable magazine . . . with a capacity greater than ten rounds" -- this has no meaning whatever, since any semiautomatic which uses a box magazine is capable of another box magazine of indeterminate size.

Section 5 contains the only provision of the bill concerning criminal misuse. This is completely nugatory, for Sec. 924(c)(1) already provides for a five year prison sentence for use or carrying "during and in relation to any crime of violence or drug trafficking crime" of any firearm. The draftsman of S. 386 knows this provision to be bogus, for such person merely copied the language of existing Sec. 924(c)(1), substituting "assault weapon" for "firearm."

Section 6 makes the entire existing civilian stockpile of countless millions of semiautomatics designed as "assault weapons" subject to the National Firearms Act, which since 1934 has included machineguns and such weapons which are not widely possessed. To transfer a semiautomatic, one must submit a detailed application to BATF with fingerprints, photograph, and local law enforcement certification. All transfers would have to be denied, because Section 5812 requires the Secretary to deny any application which "would place the transferee in violation of law," and the bill makes it unlawful (without any exception) to "receive" an assault weapon.

The bill mandates similar NFA requirements for the making of a new assault weapon, but again the application must be disapproved under Sec. 5822 because the bill does not allow any



new production. These two provisions based on Sec. 5812 and 5822, since they cannot be fulfilled, apparently are inserted so that a transferee or maker of a semiautomatic can be prosecuted for multiple NFA counts, i.e., illegal receipt, illegal making, and illegal possession.

All such semiautomatics must be registered in the NFA system, which presently includes only machineguns and other NFA weapons under Sec. 5841. Any person in possession of an "assault weapon" on the date of enactment must register it under any regulation the Secretary imposes within 30 days.

The National Firearms Act will have a new offense of "failure to register." The prosecution need not prove that the failure was willful or knowing. Mere possession could result in prosecution of an innocent person for three to six NFA violations--each count having a potential of 10 years imprisonment and a \$10,000.00 fine--in addition to the Title I offense with its potential of 5 years imprisonment a \$5,000.00 fine. Just for one act of possession, one could thus face over fifty years in prison.

S. 386 could make felons of perhaps a forth to a half of American gun owners, i.e., millions of law-abiding citizens who constitute perhaps 20% of the population. S. 386 is the most draconian firearms prohibition law ever proposed, and yet it has no provision against criminals which is not already in existing law. S. 386 is perhaps the most ambitious assault ever mounted against the Bill of Rights.

CRIMINAL PENALTIES FOR POSSESSION OF  
A SEMIAUTOMATIC FIREARM UNDER S. 386

The only provision in S. 386 which penalizes the criminal misuse of a firearm already exists in current law. 18 U.S.C. Section 924(c)(1) already provides for a five year sentence for use of any firearm in a crime of violence or drug trafficking crimes which may be prosecuted in a federal court. S. 386 merely repeats the same provision but uses the term "assault weapon" instead of "firearm." One could not be convicted of both as the offenses are identical.

However, S. 386 allows a multi-count indictment and conviction for the simple possession by a law-abiding citizen of a single semiautomatic firearm. The following example assumes that a defendant has possession of a semiautomatic firearm on the date of enactment, accompanied by three magazines, fails to register the firearm within 30 days, and transports these items from his home to a target range, where he is arrested:

| <u>Charge</u>                       | <u>S. 386/<br/>Current Statute</u>     | <u>Penalty</u>           |
|-------------------------------------|----------------------------------------|--------------------------|
| possession of assault weapon        | Sec. 2; 18 U.S.C.<br>Sec. 924(a)(1)(D) | 5 years/\$5,000          |
| transportation of assault<br>weapon | "                                      | 5 years/\$5,000          |
| possession of 3 magazines           | "<br>(3 counts)                        | 15 years/\$15,000        |
| transportation of 3 magazines       | "                                      | 15 years/\$15,000        |
| failure to register                 | Sec. 6; 26 U.S.C.<br>Sec. 5871         | <u>10 years/\$10,000</u> |
| Totals:                             |                                        | 50 years/\$50,000        |

Another example is the receipt of an unregistered semiautomatic made after the date of enactment. Assuming that the new owner crossed state lines to attend a competitive event, this could have the following consequences:

| <u>Charge*</u>                                              | <u>Statute</u>                                          | <u>Penalties</u>         |
|-------------------------------------------------------------|---------------------------------------------------------|--------------------------|
| possession assault weapon                                   | [same as above]                                         | 5 years/\$5,000          |
| receipt assault weapon                                      | "                                                       | 5 years/\$5,000          |
| transportation assault weapon                               | "                                                       | 5 years/\$5,000          |
| possession 3 magazines                                      | "                                                       | 15 years/\$15,000        |
| receipt 3 magazines                                         | "                                                       | 15 years/\$15,000        |
| transportation 3 magazines                                  | "                                                       | 15 years/\$15,000        |
| receipt of firearm<br>transferred in violation<br>of NFA    | Sec. 6;<br>26 U.S.C. Sections<br>5812, 5861(b),<br>5871 | 10 years/\$10,000        |
| possession firearm made in<br>violation of NFA              | Sec. 6;<br>26 U.S.C. Sections<br>5822, 5861(c),<br>5871 | 10 years/\$10,000        |
| possession unregistered<br>firearm                          | Sec. 6; 26 U.S.C.<br>Sec. 5861(d),<br>5871              | 10 years/\$10,000        |
| transport unregistered<br>firearm in interstate<br>commerce | Sec. 6; 26 U.S.C.<br>Sec. 5861(j),<br>5871              | <u>10 years/\$10,000</u> |
| Totals:                                                     |                                                         | 100 years/\$100,000      |

\* Note: (1) The above assumes that assault weapons will be included in prohibited acts under 26 U.S.C. Sec. 5861, since S. 386 (Section 6) subjects assault rifles to the making, transfer, and registration requirements of Sections 5812, 5822, and 5841.

(2) None of the above includes multiple aiding and abetting and conspiracy counts which are typically included in federal indictments.

ANALYSIS OF S.747 (DeCONCINI)

The ban on semiautomatic firearms in this bill (Section 2) is copied word for word from Senator Metzenbaum's bill, S.386. Both bills make it a felony to possess, transport, or transfer an "assault weapon."

An exception is made for assault weapons possessed on the date of enactment, but only if thereafter it is "lawfully" transferred, received, or possessed. If the technical paperwork requirements provided in Sections 6 and 7 of the bill are inadvertently not followed, then in addition to the penalties provided in those sections, one would commit other felonies under Section 2, because the transfer, receipt, or possession would no longer be "lawful." Thus, existing firearms are grandfathered only as long as other technical requirements are followed.

Section 3 defines "assault weapons" to include standard, highly accurate semiautomatic rifles that are in wide use for target shooting and hunting. These include the following rifles which use .308 or .223 sporting ammunition: Galil, Beratta AR-70, Colt AR-15, Fabrique Nationale FN/FAL (and others), and the Steyr AUG. These are high quality, expensive rifles that are rarely or never used in crime.

Also included are all models of the Kalashnikov, which

shoots 7.62 mm ammunition and is entirely suitable for hunting and target use. All of the above rifles were approved for importation by the Bureau of Alcohol, Tobacco and Firearms between 1968 and early 1989 because they are "generally recognized as particularly suitable for or readily adaptable to sporting purposes" under 18 U.S.C. Section 925(d)(3).

Three of the listed firearms shoot 9 mm pistol ammunition (UZI, MAC 10, and TEC-9), and one is a 12 gauge shotgun. These firearms are suitable for home defense and other lawful uses.

Section 3 also vaguely defines assault weapons to include firearms with the "same design" or which are "nearly identical," and allows conviction for felonies without requiring that the person even know that a firearm meets these vague characteristics or that BATF even publish lists of such firearms. The "same design" definition includes a list of "slight modifications or enhancements" which may not be exhaustive and which includes changes which may make a firearm more useful for sporting purposes, such as adjustable sights and a different caliber.

The "nearly identical" definition is even more ambiguous. It includes "any other firearm with an action design identical or nearly identical to an assault weapon . . . which has been redesigned from . . . or patterned after one of such specified assault weapons . . . ." All semiautomatic "action designs" are "nearly identical," in that the action is simply the "guts" of a



gun by which it functions, and has nothing to do with military-type features. Sporting and military semiautomatic shotguns, rifles, and pistols all have identical or nearly identical action designs. Further, whether an action design was "redesigned from or patterned after" that of a listed weapon is completely irrelevant to whether, as redesigned or repatterned, the firearm containing the action design is suitable for sporting use.

Section 4 allows the Secretary to recommend to Congress new firearms to be placed on the banned "assault weapons" list. Not one standard is articulated to guide the Secretary, who presumably could recommend virtually any other semiautomatic, and Congress would defer to his judgment. It is noteworthy that each one of the imported firearms listed as "assault weapons" in S.747 was approved by BATF, between 1968 and early 1989, as being "generally recognized as particularly suitable for or readily adaptable to sporting purposes."

Section 5 of the bill copies Metzenbaum's bill by providing for imprisonment of 5 years for use of an "assault weapon" in a violent or drug trafficking crime. Yet Section 924(c)(1) already authorizes 5 years imprisonment for use of any firearm in such crimes.

Section 6 of the bill, for the first time in American history, requires private individuals who live in the same state who wish to trade, buy or sell rifles with friends, neighbors and

relatives to fill out federal forms and keep records. The bill makes it a crime to buy, sell, or possess an "assault weapon" unless the purchaser has filled out a Form 4473, and both seller and purchaser must permanently keep copies of this form.

Persons who ever purchased "assault weapons" before passage of this bill--i.e., possibly 20 million of 70 million American gunowners--must obtain a copy of the Form 4473 from the dealer who sold the gun or, if he is out of business, from BATF. This requirement is not limited to persons who currently own "assault weapons," but extends to every person who has ever "purchased" one. Since the Form 4473 has been in use since 1968, an impossible burden is placed on these purchasers, who may not recall the name of the dealer who sold the gun or who may not be able to locate the dealer. A request for the form from BATF will be futile if the purchaser cannot recollect the dealer's name, and in any case the purchaser has no way to know whether the dealer has gone out of business.

Thus, Section 6 creates a crime of omission--failure to "request" a copy of the form. This must be done within 90 days, which may be insufficient time to hire a private investigator to track down every dealer from whom one has purchased "assault weapons" since 1968. Failure of a purchaser to "request" the form is a felony punishable with five years imprisonment and a \$5,000 fine under 18 U.S.C. Section 924(a)(1)(D).

Section 6 creates an ex post facto law, in that it makes it an offense to have purchased a firearm on a previous date and to fail on a later date to request records of the purchase. It also violates due process of law under the principles of Lambert v. California, 355 U.S. 225 (1957), which invalidated a law requiring ex-felons to register with police. Further, no enumerated power of Congress exists under Article I, Section 8 of the Constitution as would allow passage of such a requirement.

Section 7 of the bill creates an entirely separate crime for a person who "knowingly fails to acquire such form 4473," and imposes 6 months imprisonment and a \$1,000 fine. To be convicted, one merely must "know" that he has "failed to acquire" each form from each dealer from whom the person ever purchased an "assault weapon." Even if he remembers and has located each dealer and has requested each form, if the dealer does not respond or the person does not receive any response, then obviously the person has "knowingly failed to acquire" the forms. Since it creates an offense which is committed solely at the will, knowledge, or discretion of another person, and is entirely beyond the control of the person to be convicted, this provision is unconstitutional as a violation of due process. As in Lambert v. California, a purchaser would have "no opportunity to comply with the law and avoid its penalty, even if her default was entirely innocent." Finally, there is no conceivable enumerated

power of Congress as would allow enactment of such a crime.

Section 8 of the bill treats as no different than a felon a purchaser who, through no fault of his own, knows that he has failed to acquire the above forms. Like convicted felons, such a purchaser is to be prohibited from possession of firearms under Sec. 922(g)(1). Such person then becomes liable for imprisonment of another five years under Sec. 924(g)(1)(B) for possession of firearms after not having acquired the forms. It seems inconceivable that this kind of punishment would be proposed for a gunowner who has not been able to acquire a form.

In several respects, S.747 is far worse than S.386 (Metzenbaum) and the similar House bills. In particular, the paperwork acquisition requirements of S.747, would likely be declared in violation of due process by the courts. An analysis of the penalty provisions of S.747 attached herewith, demonstrates that a law-abiding gunowner could be sentenced literally to centuries of incarceration, depending on how many rifles he has previously purchased but for which he is unable to acquire forms.

#### CRIMINAL PENALTIES UNDER S.747

The only provision in S. 747 which penalizes the criminal misuse of a firearm already exists in current law. 18 U.S.C Section 924(c)(1) already provides for a five year sentence for use of any firearm in a crime of violence or drug trafficking

crimes which may be prosecuted in a federal court. S. 747 merely repeats the same provision but uses the term "assault weapon" instead of "firearm." One could not be convicted of both as the offenses are identical.

However, S. 747 allows a multi-count indictment and conviction for the simple possession by a law-abiding citizen of a single semiautomatic firearm or conviction even for a person who long ago purchased a firearm and does not request or receive forms. The following example assumes that a defendant has legal possession of a semiautomatic firearm on the date of enactment, fails to request or acquire a Form 4473, and transports the firearms from his home to a target range, where he is arrested:

| <u>Charge</u>                                   | <u>S. 747/Title 18</u>                 | <u>Penalty</u>             |
|-------------------------------------------------|----------------------------------------|----------------------------|
| possession of assault weapon*                   | Sec. 2; 18 U.S.C.<br>Sec. 924(a)(1)(D) | 5 years/\$5,000            |
| transportation of assault<br>weapon             | "                                      | 5 years/\$5,000            |
| fail to request copy of Form<br>4473            | Sec. 6; Sec. 924<br>(a)(1)(D)          | 5 years/\$5,000            |
| Fail to acquire Form 4473                       | Sec. 7                                 | .5 years/\$1,000           |
| Possess firearm after<br>failed to acquire form | Sec. 8;<br>Sec. 924(a)(1)(B)           | 5 years/\$5,000            |
| <b>Total:</b>                                   |                                        | <b>20.5 years/\$21,000</b> |

\* The original possession was legal, but the possession became illegal under Section 2 when (a) the Form 4473 was not requested and acquired under Sections 6 and 7, as well as (b) when a firearm was possessed without having acquired the forms under Section 8.



If the person possessed, transported, and failed to request and obtain paperwork on five "assault weapons" instead of one, then five separate counts would exist, for a total of 102.5 years imprisonment and fines of \$105,000.

If the person purchased and sold five "assault weapons" between 1968 and 1978, and no longer owns firearms of any kind, upon failure to request and acquire records, that person is liable as follows:

| <u>Charge</u>                      | <u>Penalty</u>                               |
|------------------------------------|----------------------------------------------|
| Fail to request records (5 counts) | 25 years/\$25,000                            |
| Fail to acquire records (5 counts) | <u>5 years/\$ 5,000</u><br>30 years/\$30,000 |

The following scenario assumes that a person imports a semiautomatic with an action design which in his judgment (but not BATF's) is not "nearly identical" to an assault weapon and sells it to an individual, who in turn gives it to his son who lives in the same city as a gift. The son was aware of the importation and transfer. Assume that no Form 4473 is completed in the intra-state, private transaction between father and son. The son is arrested while transporting the firearm to go hunting.

The son is liable as follows:

| <u>Charge</u>                                   | <u>S.747/Title 18</u>           | <u>Penalty</u>         |
|-------------------------------------------------|---------------------------------|------------------------|
| transport                                       | Section 2; Section 924(a)(1)(D) | 5 years/<br>\$5,000    |
| receipt                                         | "                               | 5 years/<br>\$5,000    |
| possession                                      | "                               | 5 years/<br>\$5,000    |
| aid and abet above offenses committed by father | 18 U.S.C. Section 2             | 15 years/<br>\$15,000  |
| aid and abet import, ship, and transfer         | 18 U.S.C. Section 2             | 15 years/<br>\$15,000  |
| conspiracy                                      | Section 371                     | 5 years/<br>\$10,000   |
| receipt imported goods contrary to law          | Section 545                     | 5 years/<br>\$10,000   |
| purchase without Form 4473                      | Section 6(2)(S.747)             | 5 years/<br>\$5,000    |
| fail to maintain record                         | Section 6(3)                    | 5 years/<br>\$5,000    |
| fail to acquire Form 4473                       | Section 7                       | .5 years/<br>\$5,000   |
| possess firearms after failure to acquire form  | Section 8                       | 5 years/<br>\$5,000    |
|                                                 | Total                           | 70.5 years<br>\$81,000 |

The above examples assume a violation with only one or a few "assault weapons." Many collectors, however, own dozens or even hundreds of firearms. Thus, indictments with dozens or even hundreds of counts will be permissible and a collector could be

liable to serve centuries of incarceration and to pay millions of dollars in fines.

S. 386 SUBSTITUTE

S. 386, in its draft substitute version, bans possession of ordinary semiautomatic firearms commonly kept by citizens for lawful purposes, thereby infringing on the Second Amendment right of the people to keep arms. It allows prosecution for multiple counts for the transportation, shipment, receipt, and possession of one and the same firearm, and the courts would allow conviction of multiple counts, exposing a defendant to decades of incarceration. While the prohibition has certain exceptions, anyone could be prosecuted for violation and exempt persons would have the burden to defend themselves and prove their exemption.

The bill bans magazines, innocuous pieces of metal which are not weapons and of which there are millions or billions in existence. Possession of a single magazine is punishable with two years imprisonment. A person in possession of a dozen magazines, even without a firearm present, could be prosecuted for a dozen counts, and would be exposed to decades of imprisonment. A defendant in possession of magazines before enactment of the ban would have no way to prove when such magazines were manufactured.

The bill lists some twenty-five brand names of outlawed firearms. This is a bill of attainder in violation of Art.I, Sec. 9, Clause 3 of the Constitution, for it makes illegal the

manufacture of firearms by certain persons. For instance, any semiautomatic firearm made by UZI (Israeli Military Industries), and any 9mm firearm of any kind with the Cobray SWD trade name, are illegal. "Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." United States v. Brown, 381 U.S. 437, 448-49 (1965).

All of the listed firearms which are imports have been determined to be "generally recognized as particularly suitable for or readily adaptable to sporting purposes" under 18 U.S.C. Section 925(d)(3). Many of the domestically produced firearms listed are used in target competition. All of the listed firearms would be useful for both lawful protection of self and family and for militia purposes.

S. 386 adds ambiguity to its feature as a bill of attainder by including "all other models by the same manufacturer with the same design which may have slight modifications or enhancements". Equally vague are the terms "any other firearm with an action design identical or nearly identical to" the listed firearms. All semiautomatic "action designs" are "nearly identical."

Prohibited magazines include any that hold over twenty rounds. Large capacity magazines are primarily used for the sport of target shooting. Both informal target shooting at a

range and formal competition require that magazines be previously loaded. Target shooting as it is practiced today would be nearly impossible if participants were forced to waste time repeatedly reloading low capacity magazines. The U.S. Civilian Marksmanship Rules and Regulations for National Matches require civilians who use M14 and AR15 rifles to use standard 20 or 30 round box magazines. (Copy attached).

The Secretary is required to recommend to Congress the placement of additional firearms on the prohibited list when appropriate, without giving the Secretary any standards. An Advisory Panel of state and local law enforcement representatives would make recommendations to the Secretary, although the police have no special qualifications to determine which firearms have sporting utility.

The Secretary may ban for a year imports of "any firearms" not sold in the United States before April 1, 1989. This arbitrary power could bankrupt importers of sporting firearms.

A person who possesses semiautomatic rifles must request a Form 4473 from every dealer from whom he purchased each rifle, as far back as 1968. This is an impossible task, for a person may have no recollection and no method to determine the whereabouts of specific dealers, who may be across the continent or out of business. BATF will create a central registration of all records on gunowners where dealers went out of business.

The purchaser must retain each such form. Under 26 U.S.C.



Section 5871, "any person who violates or fails to comply with any provision of this chapter" may be imprisoned for ten years. Thus, the purchaser is punishable for separate ten year felony counts for failure to request the form and for failure to retain a single form. Multiple felony counts could be brought for owners of multiple firearms.

To transfer an affected firearm, an owner must produce previous Forms 4473--potentially an impossible task. The transferor must, if the Secretary by regulation requires, obtain local law enforcement permission for the transfer, another potentially impossible burden. Local law enforcement may veto the transfer merely by informing the transferor that it would violate State or local law, even if the allegation is false. Moreover, this is the first time in American history that intrastate transfers by private individuals (nonlicensees) are subjected to federal firearms paperwork requirements.

It is a crime "to fail to obtain a Form 4473 or equivalent," even though the owner tried his or her best to obtain the form. The gun owner is subject to the mercy of other persons for his or her failure to obtain a form, an absolute criminal liability offense. Failure to obtain each form is punishable by six months imprisonment, which means that a collector who owns fifty firearms could get twenty five years incarceration because he could not locate prior transferors or they would not send the forms. Failure to "request" a form is separately punishable from

failure to "obtain" a form.

Responsible gun owners who would never use or exhibit firearms in an unsafe manner may suffer decades of imprisonment for paperwork violations. By contrast, the Secretary may exempt from the act persons using assault weapons for "motion picture or television production." While depiction of violent misuse of firearms in movies is protected by the First Amendment, a special exemption for purveyors of violence would be reprehensible.

S. 386 would make it a five year felony for a person who has been convicted "in any court" of a crime involving simple possession of "any controlled substance . . . (regardless of the punishment)." Under this, a responsible adult who as a teenager had been convicted in juvenile court of possession of a small quantity of marijuana, under a state law providing for only a small fine or no more than thirty days in jail, could never possess a firearm. A far better approach would be to make it a ten year offense (instead of just five years) to possess a firearm while being addicted to heroin or being a phencyclidine (PCP) user.

In contrast with all of the above over-kill felony provisions for possessory, technical, crimes without victims, S. 386 would provide only ten years imprisonment for use of an assault weapon in a crime of violence or during a drug trafficking crime for which one may be prosecuted in federal court. Under this, a person who uses such a firearm for a murder

punishable under federal law could obtain only ten extra years imprisonment. Unlike law-abiding citizens, felons and drug addicts could not be prosecuted for paperwork violations of S. 386 due to the Fifth Amendment. See Haynes v. United States, 390 U.S. 85 (1968).

Headquarters  
Department of the Army, the Navy and the Air Force  
Washington, DC  
15 August 1985

\*Army Regulation 920-30  
Chief of Naval Operations  
Instructions 3590.7C  
Air Force Regulation 50-17  
Marine Corps P3590.13A

#### Civilian Marksmanship

### Rules and Regulations for National Matches and Other Excellence-in-Competition (EIC) Matches

**Summary.** This regulation revises the rules and regulations for National Matches and other excellence-in-competition matches. It establishes responsibilities for the National Matches, eligibility criteria and categories for the competitors, and the program for the National Trophy Matches. This regulation incorporates the provisions of AR 622-10 which is rescinded. It also describes the awards for the National Trophy Matches. This regulation changes the staff organization of the National Matches, establishes new eligibility requirements and programs for the National Trophy Matches, and introduces new awards.

**Applicability.** This regulation applies to the Active Army, Navy, Air Force, and Marine Corps; National Guard; Army, Navy, Air Force, and Marine Corps Reserve; all other personnel competing in the National Matches; and civilians in other EIC matches.

**Impact on New Manning System.** For Army users, this

regulation does not contain information that affects the New Manning System.

**Supplementation.** Supplementation of this regulation is prohibited without prior approval from HQDA (SFDM), WASH DC 20314-0100.

**Interim changes.** Interim changes to this regulation are not official unless they are authenticated by The Adjutant General, HQDA. Users will destroy interim changes on their expiration date unless sooner superseded or rescinded.

**Suggested improvements.** The proponent agency of this regulation is the Office of the Secretary of the Army. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Director of Civilian Marksmanship, HQDA (SFDM), 20 Massachusetts Avenue, NW, Washington, DC 20314-0100.

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\*This regulation supersedes AR 920-30/OPNAVINST 3590.7C/AFR 50-17/MCO P3590.13, 30 June 1967 and AR 622.10, 2 June 1967, and rescinds DA Form 1690, March 1976.

15 August 1985

AR 920-30/OPNAVINST 3590.7C/AFR 50-17/MCO P3590.13A

nated team captain and may have a designated team coach. (See para 4-4 on when coaches are allowed and who may serve as a coach.) The captain and coach may be firing members or alternates if eligible, and must be listed as such on the team entry form. (Paras 3-8 and 4-2 discuss new shooter requirements and team member eligibility.)

#### 4-12. Team squadding

a. All teams will be assigned the same number of targets.

b. In rifle team matches, show fire will be conducted with two firers assigned to a single target. This is known as pair firing. If firing points are too narrow to permit this procedure, each team may be assigned one or more adjoining firing points, provided all teams fire concurrently. When enough targets are available, each team may be assigned more than one target. However, in this case, each team must be assigned the same number of targets.

c. When two competitors are assigned to a single target (pair firing), they will fire alternately. The competitor on the right will fire first. A short fired out of turn will be scored as a miss.

d. Team captains may place team members on assigned targets in any order they choose. They may change the order of a team member firing between stages, in each case notifying the scorer.

#### 4-13. Station and duties of team coaches

a. In the slow fire stages of rifle matches, the team coach's station will be between the pair on the firing line. If only one member is firing, the station will be directly behind the member. In rapid fire stages, the station will be directly behind the member firing.

b. In pistol team matches, one coach is allowed for each target assigned the team. When the team is on the firing line, the team coach's station will be directly behind the team member or members firing. The team captain may act as a coach on the second target.

c. In pair firing, the positions of the coach or competitors may not be shifted to form a windshield for a firer.

d. When the team is on the firing line, coaches will be confined to the prescribed station and to the activities normally expected of a coach. Coaches may assist team members by calling shots, checking time and scores, ordering sight changes, and so on. However, coaches may not physically assist in loading, making sight changes, or in assuming positions. Also, they must control their voices and actions so as not to disturb other competitors. In communicating with the team, coaches will not use electrical or mechanical means.

#### 4-14. Stations of team captain

When a team is on the firing line, the team captain and

one assistant may be stationed in front of the ready line and slightly behind the coach. The captain is positioned there to observe team operations and the scorekeeping. The team captain may not assist in coaching unless occupying the coach's station. The captain may talk with the coach if it does not distract firers on the firing line. The captain may not talk to the firer.

### Section III

#### Types of Firearms, Ammunitions, and Other Equipment

#### 4-15. Description of arms to be used

a. *U.S. rifle, caliber .30 M1.* Competitors may use the caliber .30 M1 as issued by the U.S. Army, a commercial rifle of the same type and caliber, or either rifle if chambered for 7.62mm. The requirements for these rifles are listed below.

(1) The trigger pull must be at least 4½ pounds.

(2) A standard issue type wood or synthetic material stock and standard issue type leather or web sling must be used.

(3) Sling cuffs and sling pads are not permitted. Hooks, buttons, straps, or other similar devices fastened to the shooting coat for the purpose of holding the sling in place are prohibited.

(4) The gas system must be fully operational.

(5) The front and rear sights must be of U.S. Army design for this rifle, but the dimensions of the rear sight aperture and front sight blade may vary.

(6) External alterations to the assembled arm are not allowed.

(7) These rifles may be modified internally to improve functioning and accuracy. A special match barrel may be installed. Synthetic materials may be applied to the interior of the stock to improve the bedding. Modifications must not interfere with the functioning of the rifle and safety devices as manufactured. Also, modifications must not change the configuration or appearance of the assembled arm.

b. *U.S. rifle, caliber 7.62mm M14 series.* Competitors may use the caliber 7.62mm M14 series as issued by the U.S. Army or a commercial rifle of the same type and caliber. The requirements for these rifles are listed below.

(1) The trigger pull must be at least 4½ pounds.

(2) A standard issue type wood or synthetic material stock must be used. The stock must not be more than 2 inches wide at a point immediately to the rear of the front band and not more than 2.5 inches wide at the front and rear of the receiver. The width at the receiver may be carried through to the butt plate. The stock must have a continuous taper from receiver to front band.

(3) A standard issue type leather or web sling must be used. Sling cuffs and sling pads are not permitted. Hooks, buttons, straps, or other similar devices



fastened to the shooting coat for the purpose of holding the sling in place are prohibited.

(4) The gas system must be fully operational. To improve operation, the gas cylinder plug may be altered by making an axial hole that is approximately  $\frac{1}{8}$  inch in diameter in the center of the plug.

(5) The front and rear sights must be of U.S. Army design for this rifle, but the rear sight aperture and front sight blade may vary in dimensions.

(6) The rifle must be adjusted so that automatic fire is impossible without removing the stock and changing or altering parts.

(7) The standard 20 or 30 round box magazine must be attached during the firing of all courses and in all positions.

(8) The hinged butt plate will be used only in the folded position.

(9) External alterations to the assembled arm are not allowed.

(10) The rifle may be modified internally to improve functioning and accuracy. A special match barrel may be installed. Synthetic materials may be applied to the interior of the stock to improve the bedding. Modification must not interfere with the proper functioning of the rifle or safety devices as manufactured. Modifications must not change the configuration or appearance of the assembled arm.

c. *U.S. rifle, caliber 5.56mm M16 series.* Competitors may use the caliber 5.56mm M16 series as issued by the U.S. Armed Forces or a commercial rifle of the same type and caliber. The requirements for these rifles are listed below.

(1) A bipod or grenade launcher will not be used.

(2) The trigger pull must be at least 5 pounds.

(3) A standard issue type stock, pistol grip, handguard, and web sling must be used.

(4) The rifle must be modified so that automatic fire is impossible without removing, replacing, or altering parts.

(5) The standard 20 or 30 round box magazine must be attached during the firing of all courses and in all positions.

(6) The gas system must be fully operational.

(7) External alterations to any part of the assembled arm are not allowed. However, an external device may be attached to prevent selector lever movement to the auto position.

(8) The front and rear sights must be the standard design for this rifle as issued by the U.S. Armed Forces.

(9) Hooks, buttons, straps, or other similar devices fastened to the shooting coat for the purpose of holding the sling in place are prohibited.

d. *U.S. pistol, caliber .45M1911 or M1911A1.* Competitors may use the caliber .45M1911 or M1911A1 as issued by the U.S. Armed Forces or a commercial pistol of the same type and caliber. The requirements for these

pistols are listed below.

(1) A standard issue stock of wood or synthetic material, a similar stock of commercial manufacture, or another comparable design that does not interfere with the functional or maintenance features of the pistol must be used. The stock must be functionally identical for right or left hand use. It must not—

(a) Be more than  $1\frac{1}{2}$  inches thick between the right and left side extremities.

(b) Cover the mainspring housing.

(c) Prevent holstering in the standard service holster.

(2) The trigger pull must be at least 4 pounds.

(3) The pistol will have open sights only. The front sight must be nonadjustable. The rear sight may be adjustable and must have an open "U" or rectangular notch. The distance between sights, measured from the apex of the front sight to the rear face of the rear sight, must not be more than  $7\frac{1}{4}$  inches.

(4) The forearm of the grip may be checkered or stippled.

(5) The mainspring housing may be either the straight or the arched type, and may be checkered or stippled.

(6) Trigger shoes and trigger stops, internal or external, may be used.

(7) External finishes may be blued, parkerized, or bright. All other external alterations, additions, or changes to the appearance or configuration of the assembled arm are prohibited, except that the ejection port may be lowered to aid in ejection.

(8) The pistol may be modified internally to improve functioning and accuracy. (For example, a special match barrel may be fitted.) However, the modifications may not interfere with the proper functioning or safety devices of the arm as issued by the U.S. Armed Forces. All safety features must operate properly.

#### 4-16. Rifles and pistols available

Under rules announced by the DCM, National Match-grade rifles M14 and M1 and pistols M1911 series will be made available at the National Matches for temporary loan to participants.

#### 4-17. Checking firearm characteristics

The competitor will ensure that his or her firearm is safe and meets the requirements of paragraph 4-15. At any time, the XO, NM, may direct the weighing of triggers with official test weights and may check other functions and component parts.

#### 4-18. Use of the same firearm by more than one competitor

More than one competitor may use the same firearm in a match if squadding permits, but special squadding for this purpose is not authorized.



## Citizens Committee for the Right to Keep and Bear Arms

Liberty Park 12500 N.E. Tenth Place Bellevue, WA 98005 (206) 454-4911

Alan M. Gottlieb  
Chairman  
Joe Friend  
Executive Director

John M. Snyder  
Director of Public Affairs  
Robert Kukla  
Legislative Director

"... the right of the people to keep and bear Arms, shall not be infringed."

May 15, 1989

### National Advisory Council

(partial listing)

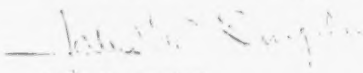
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Hon. Joseph R. Biden, U.S.S.  
Chairman  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D. C. 20510-6275

Dear Mr. Chairman:

Enclosed is a statement I offer for inclusion in the record of the May 5, 1989 public hearings on S. 386 and S. 747 by the Subcommittee on the Constitution.

Cordially and sincerely,

  
John M. Snyder  
(address below)

Enclosure

Continued on reverse side

U.S. Capital Office: 600 Pennsylvania Ave. S.E., Suite 205, Washington, D.C. 20003 (202) 543-3363

May 9, 1989

STATEMENT OF  
JOHN M. SNYDER  
PUBLIC AFFAIRS DIRECTOR  
CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS  
PREPARED FOR THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
WASHINGTON, D. C.  
ON S. 386 AND S. 747

Mr. Chairman and Members of the Committee:

Although oversight hearings on semiautomatic firearms were held February 10 by the Subcommittee on the Constitution, legislative hearings on S. 386 and S. 747, reported April 19 by the Subcommittee to the full Committee, were not held prior to such report.

While we realize Subcommittee legislative hearings on these two proposals were held May 5, it seems rather strange for a Subcommittee to report two bills and hold legislative hearings on them subsequent to such report.

Also, it would seem appropriate that the full Committee hold legislative hearings on S. 386 and S. 747 prior to final full Committee action on the two proposals.

Underlying both proposals, it would seem, is the theory that semiautomatic firearms or some semiautomatic firearms ought not be accessible or readily accessible to the general law-abiding American public.

This theory, unfortunately, seems too closely akin for comfort to the theory underlying certain occurring last month in the Soviet Union.

A number of news organizations carried the report that Soviet troops recently confiscated 66,000 registered hunting rifles within 36 hours in the Soviet "Republic" of Georgia.

At least one report indicated that police arrested hundreds of people and seized tens of thousands of hunting rifles.

This was done in the Soviet Union to quell the political unrest on the part of untold numbers of people trying to secure their freedom from government tyranny.

Here in the United States, where people do have their freedom and the right to keep and bear the arms with which they can protect that freedom, gun control advocates are trying to take away that very right.

Using the excuse that they want to take away from the people so-called "assault rifles," gun control advocates are working to take away from the American people the right to acquire and own semiautomatic firearms of all types - rifles, shotguns and handguns - which are used for such legitimate purposes as hunting, recreational shooting and self-defense.

Tens of millions of law-abiding American citizens own tens of millions of semiautomatic firearms. S. 386 and S. 747 would make the ownership of many of these firearms a crime or so restrict ownership of them as to terminate it as a right and turn it into a government-sponsored privilege, possibly overnight turning millions of law-abiding American citizens into criminals.

The real question before the Committee in the current consideration is: "Do you want to protect the freedom of the American people or do you want to turn the American people gradually, through the legislative process, into a people subject to a government tyranny under the boots of troops and police?"

Some indication that Americans generally will not tolerate such legislation may be deduced from an article in THE WASHINGTON POST, May 6, 1989, in which writer Jay Matthews reported the previous day from Los Angeles that "more than two months after instituting the Nation's most far-reaching ban on semiautomatic assault rifles, Los Angeles officials are confronting widespread passive resistance by gun owners who have refused to sell, destroy or turn in the weapons.

"Police say few of the lethal military-style rifles have been turned in since the ban took effect March 1. 'They are outraged at anybody passing this kind of legislation,' sporting-goods executive Mike Lum said of many gun owners he has contacted.

"Critics of the law, being challenged in State and Federal courts, say Los Angeles' experience indicates trouble for other localities or States such as California that are close to passing laws in response to national concern about assault-weapon killings."

The latest attack on the right of tens of millions of law-abiding Americans to own certain kinds of firearms, of which S. 386 and S. 747 are a part, already has occasioned an unprecedented number of public demonstrations on the part of tens of thousands of firearms owners against such attacks.

Already, such demonstrations have occurred or are slated to occur in Austin, Texas, Buffalo, New York, Columbus, Ohio, Fort Worth, Texas, Houston, Texas, Knoxville, Tennessee, Los Angeles, California, Louisville, Kentucky, New York, New York, Springfield, Massachusetts, Trenton, New Jersey, and Victorville, California.

At this point, there simply is no telling how many of these demonstrations will occur in the weeks and months ahead, or, for that matter, how often and how many forms of peaceful protest America's tens of millions of law-abiding firearms owners will employ in non-violent resistance to infringement on their right to keep and bear arms.

COMMENTS OF DARRYL MORRIS  
ON S386 and S747

May 29, 1989

PRESENTED TO THE UNITED STATE SENATE  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON THE CONSTITUTION



## COMMENTS OF DARRYL MORRIS

My name is Darryl Morris, I am an engineer, and a qualified firearms instructor with over ten years experience as a range safety officer. For over 18 years I have been an active shooter. I have broad experience with the use of various firearms for both competitive shooting and hunting.

Over the last several years I have closely followed firearms legislation at both the federal and state levels as a matter of personal interest. In my comments to this committee I would like to focus on clarifying several firearm "misconceptions" which have been presented in previous testimony, as well as present some background on what appear to be critical issues in the current debate over "assault weapon" legislation.

## "ASSAULT WEAPON" VERSUS SPORTING ARM CHARACTERISTICS

This committee has heard a variety of testimony as to whether so-called "assault weapons" can practically be distinguished from sporting firearms for the purpose of controlling criminal misuse. Some proponents have claimed "assault weapons" are a separate "class" of firearm [1]. The key characteristics proponents have cited as defining an "assault weapon" include: 1) their "scary" appearance, 2) pistol grip or folding type stock designs, 3) large magazine capacity, 4) "short" barrel length, 5) a threaded barrel, and 6) presence of flash suppressors, bayonet lugs, or bipods. Unfortunately these differences are not as black and white as they may seem, and the issue of practical enforceability, which is at the very heart of the supposed reasons for these bills, has received only limited attention in previous testimony.

Many common sporting arms share the same attributes as so-called "assault rifles"---for very practical reasons having nothing to do with war or homicide. As some members of this committee may be aware, over the last 100 years of small arms development it has often been the civilian target shooting and sport shooting "fraternities" which have first pioneered innovations which were later adopted by the military. This is a useful perspective to consider when asking why would someone want an "assault rifle" feature on a sporting arm.

Both S386 and S747 have been represented as measures intended to reduce firearms violence in criminal activities, in particular, drug-related criminal activities. But what has been only lightly touched upon in testimony is the practical prospects for this legislation actually achieving that goal. As an engineer I tend to look at this issue pragmatically.

Given the technically sophisticated tools and "means of production" available to almost anyone in our modern society, a serious question that must be asked is if any legislation "banning" such simple machinery as a semi-automatic firearm can realistically be expected to succeed in

limiting availability to criminal elements, particularly sophisticated ones. None of the characteristics mentioned earlier poses any particular technical obstacle to black market manufacture.

These points are perhaps best illustrated by examples.

**1) Pistol Grip Stocks** - Over 70% of the various sporting arms made today have a "pistol grip" stock. The only difference between these firearms and so-called "assault rifles" is that: 1) the pistol grip is usually integral with the shoulder stock, as opposed to being a separate piece, and 2) the grip angle (relative to the barrel) may differ. Claims that this type of stock is principally designed for rapid "spray-fire", as opposed to precise, accurate fire, are best answered by noting that some of the finest olympic-class target rifles made [2] (which are single shot, bolt action firearms), employ integral pistol grip stocks of roughly the same angle and same relative position to the trigger as on a so-called "assault rifle". The reason is simple ergonomics, its less fatiguing for the shooter.

Stock of this type are not new. Thumbhole stocks and even "bullpup" stocks were used experimentally in the mid '30s and possibly before. Stock design has long been an area of experimentation in target shooting circles.

Regulating rifle stock design as an "assault rifle" criteria, would pose some interesting problems. First, it would require that either the congress or the Secretary of the Treasury develop a legal definition of an "assault stock"---in other words, the particular shape of a piece of wood or plastic, which presumably would be banned. Such a definition would be necessary, because there are literally dozens of after-market stocks available for some firearms models. Testimony has already been given by BATF [3] for example that a firearm identical to the AKS, but with a sport stock, is available, and in appearance, is no different than other so-called sporting firearms.

A second interesting dilemma would be how to handle firearms which have been "sporterized". While this committee is probably aware an after-market stock can be added to a sporting arm, you may not be aware that sportsmen regularly take military actions, prized for their rugged and reliable design, and convert them into "sporting" rifles with nicely finished wood stocks, blued finishes, different sights, etc.---not unlike the sporting version of the AKS mentioned earlier. How will these sporterized rifles be classified? Can an "assault rifle" be "rehabilitated"?

Finally there is the practical issue of enforcement. Regulations notwithstanding, it would be an easy matter for anyone to fabricate or modify a stock, add a pistol grip, and attach it to a firearm in a few hours using only hand tools. Given this, the value of such regulation would seem doubtful.

**2) Large Capacity Magazines** - Large capacity magazines are often cited as a prime "assault weapon" criteria, but the prospects for their effective regulation I believe are dim, especially with regard to criminal elements. Large capacity magazines have never been regulated and I could not even find a reliable estimate of the number currently in circulation. It would have to be in the millions.

Issues of current magazine population aside, there is nothing difficult about fabricating a large capacity magazine. Most magazines for "assault rifles" are nothing more than bent sheet metal with a spring. Some are even made of injection molded plastic. It would be very easy to illegally fabricate such magazines from scratch, or as another alternative, butt weld, solder, or glue (on plastic magazines) two smaller capacity magazine bodies together to increase capacity. Again the prospect of practical criminal regulation is doubtful.

**3) Barrel length** - In previous testimony to this committee [1] a statement has been made that "...in the case of a rifle or shotgun, a barrel length of less than 22 inches sacrifices accuracy and range for mobility...". As a general statement, this is simply not true, and in the case of a shotgun, firing a shot load, the term accuracy is probably a misnomer.

For barrel lengths down to 16 inches, the inherent accuracy of a rifle is principally determined by factors such as the trueness and uniformity of the barrel; dimensional "tightness" of the barrel and chamber; barrel crowning; tightness and repeatability of the action; barrel bedding; and to a very large part, ammunition quality. In my experience barrel length, as an accuracy factor, is a poor second to these other considerations. In fact, in target shooting circles, it is well known that a shorter, "stiff" barrel (with a higher diameter to length ratio), will often shoot more accurately than a longer "slimmer" barrel of comparable diameter.

The only place where sheer length comes into play in accuracy is where "iron sights" are used, as opposed to optical sights. In this instance the longer sight radius may improve practical accuracy, but as a function of shooter ability, not firearm accuracy.

There are a wide variety of commercial sporting rifles made, both semi-automatics and otherwise, which have barrel of less than 22". Some of these are so-called "brush" rifles, which are specifically tailored for hunting in brushy terrain, where a shorter barrel is preferred. The bottom line however is that these rifles provide all the practical accuracy which is required for the particular type of hunting involved.

If barrel length and accuracy are to become "assault rifle" criteria it is important that this committee realize what constitutes practical accuracy for various purposes. Accuracy is generally evaluated in terms of "group size" (for 5 or 10 rounds) and is measured in terms Minute of Angle (MOA), where 1 MOA is roughly equivalent to a 1 inch group at 100

yards. For target shooting, the range of accuracy desired ranges from about 1 MOA to 0.25 MOA, depending on the type of competition. For hunting, accuracy of 4 to 5 MOA is often acceptable, depending on the distance and type game. Long range hunting (western states) or "varmint" hunting may require accuracy of 1 MOA or better.

Most of the so-called "assault rifles" listed in S386 and S747 are easily capable of hunting accuracy with proper ammunition, and some, such as the HK91 and AR15, are capable of 1 MOA or better---target accuracy. The AR15, in fact, is one of several firearms commonly used in service rifle class target competition.

**4) Threaded Barrels** - In previous testimony before this committee [1] it has been stated that a threaded barrel designed to accommodate a flash suppressor or a silencer serves no sporting purpose. Within the narrow bounds of that carefully worded statement, that is the case of a barrel which is specifically threaded for only those purposes, this is perhaps true. But it is definitely not true for firearms with threaded barrels in general.

The most common reason for threading the muzzle end of a rifle barrel is to attach a muzzle brake or recoil reducer. Contrary to common misconception the function of muzzle brakes and flash suppressors are distinctly different. Muzzle brakes are used to reduce the recoil of a rifle by venting the powder gases to the side when they exit the muzzle of the firearm. These exhaust gas are similar to the thrust of a jet engine and can account for 50% or more of the recoil component. Muzzle brakes are quite common on bolt action rifles as well as semi-automatics.

Both pistol barrels and shotgun barrels are also sometimes threaded for various purposes. Recoil compensators, which are similar to muzzle brakes, are quite common on target pistols. They function by direct the exhaust gases upward to reduce the muzzle "flip" of pistols and to improve recovery time in competition. They are not commonly used on pistols intended for defensive use because they lengthen the barrel, add weight to the firearm, and may snag on holsters or clothing. On some pistols, such as the Browning GP (a target pistol), a threaded barrel serves another very practical purpose---it holds on the front sight.

Many shotguns also have threaded barrels to accommodate the attachment of either muzzle brakes or adjustable chokes. For these applications the barrel is generally threaded on the outside. Shotguns using screw-in choke tubes to adjust the shot pattern are also threaded, but on the inside of the barrel.

Regulation of firearms with threaded barrels in order to preclude the attachment of a silencer or flash suppressor is of questionable value. For one thing, silencers are already regulated. Aside from the simplicity of someone illegally adding threads to a barrel, it is really not necessary to have a threaded barrel in order to attach a flash suppressor or flash

hider. The flash hider on the M1 Carbine used by U.S. forces in World War II was a simple sheet metal cone (not unlike a hardware store funnel) which clamped on to the unthreaded muzzle of that firearm with a clamp plate and screws. An improvised flash hider of similar design could readily be made from simple sheet metal.

**5) Flash Suppressors** - There is a misconception that flash suppressors effectively conceal or hide the muzzle flash of a firearm. This is not entirely true. The short (1-2 inch long) flash suppressors found on some firearms designated as "assault rifles" generally do not completely conceal or hide the muzzle flash, either from side view, or certainly from frontal view. They reduce, or suppress, part of the muzzle flash only. Their principle advantage on a military firearm is not so much to conceal the firing position as to prevent the shooter from becoming "night blinded" by his own muzzle flash.

**6) Bipods** - Bipods have some times been cited as an "assault weapon" criteria, which is surprising considering their only use is for improving accuracy in prone firing. Bipods are widely used on hunting rifles of all types in the western part of the U.S. where the shooting distance is often over 200 yards. There are many types of after-market bipods available for most sporting arms.

#### LEGITIMATE USE OF "ASSAULT RIFLES"

This committee has no doubt heard the exchange: "Why does anyone need an 'assault rifle'? Certainly not for home defense...". This is a typical urban question and a typical urban response. In the rural parts of this country, where the nearest law enforcement is 20 miles and 20 minutes away (provided the phone is working), the view is somewhat different.

In these communities I assure you that firearms bills such as S386 call "assault rifles", the Ruger Mini-14 for example, are widely accepted as practical utility arms. They are used for everything from dealing with wild dogs preying on livestock to occasionally confronting trespassers and thieves. And in this rural environment, they are far more practical for these purposes than either "sporting" rifles or handguns.

This committee should also remember that police and law enforcement are not the only ones who occasionally come face to face with the drug dealers and other violent criminals. It was not too many years ago when there were reports from Southern Florida that drug smugglers were hijacking pleasure boats at sea to use in drug smuggling---and throwing the bodies of their original occupants overboard. What stopped much of this was boat owners arming themselves, and not just with sporting firearms.



## SUMMARY

After a through review of both S386, S747, and the S386 Substitute, I reached the conclusion that the approach of "banning" so-called "assault weapons" is fatally flawed as a crime fighting proposal.

The problems with establishing a definition of an "assault weapon" are far more than just technical in nature. What is being attempted is a translation of fear, misconception, and media "attention" regarding certain crimes into general principles of firearms law. What keeps getting in the way is not the NRA, but the reality that the weapon has little to do with the crime and the fact there is little basis for functional distinctions between firearms use and appearance. There is a underlying assumption at the very root of these bills which holds that the intent of the owner can accurately be determined by the appearance or accessories of the firearm, and that is simply not true. The millions of legally owned firearms which are not misused proves it.

The practical prospects for enforcement of such laws are also doubtful. While I personally believe that most law abiding firearms owners would comply with the law, whether they agreed with it or not, I can not picture the criminal element being as gracious. Nor the black market. This committee would do well to field-strip a few "assault weapons" to see just how simple a mechanism these bills propose to ban.

In studying the statistical case for and against "assault weapons" I independently reached much the same conclusions as other witnesses [4] ---there are no hard statistics supporting the claims of widespread criminal use or "popularity", and casual evidence exists [5][6] to the contrary. The most reliable figures available [7] indicate rifles of all kind are used in only 4.3% of homicides, while hands, feet and fists are used in 6.5%, blunt objects in 5.8% and cutting or stabbing instruments in 20.3%. These figures have not changed by more than 1.5% in the preceding 4 years. This hardly makes a case for the most extreme degree of firearms regulation yet attempted in American history. Adding to this are the constitutional concerns documented by others [4][8][9], and confirmed by this committees own research on the original intent of the second amendment [10] conducted in 1982.

Taking all these factors into account, it is my belief that S386, S747 and the S386 substitute represent an drastic overreaction, especially considering the fact less extreme measures such as purchaser background checks have yet to be tried. I am not unsympathetic to the concerns of law enforcement or others who have testified, but this is not the way toward a solution. It is a simplistic reaction to one symptom of a far deeper and more complex problem.

There are a wide range of other potential measures this committee should explore. Personally I feel a background check law could be crafted which would be acceptable to all parties, and which would offer a far more effective and cost-efficient response to firearms misuse than the current proposals. The proposals in S747 for non-centralized record keeping of transfers may also have merit as an element of such an overall proposal.

## References:

- [1] Prepared testimony of Phillip C. McGuire, Law Enforcement Advisor for Handgun Control, Inc., before the Senate Judiciary Committee, Subcommittee on the Constitution (dated May 5, 1989)
- [2] Examples are the Anschutz models 64MS, 1913, 1907, 1808ED; Beeman/Weihrach HW 60; Beeman/FWB models 2000, 2600; Beeman/Krico 340; Remington Model 40; and Walther models U.I.T. match, GX-1, KK/MS
- [3] Testimony of Edward D. Conroy, Deputy Director, Law Enforcement, Bureau of Alcohol, Tobacco and Firearms, February 10, 1989, reprinted in the Congressional Record-Senate (February 28, 1989)
- [4] Prepared testimony of Edward C. Ezell, before the Senate Judiciary Committee, Subcommittee on the Constitution (dated May 10, 1989)
- [5] Prepared Testimony of Detective Jimmy L. Trahin, Los Angeles Police Department, Firearms/Ballistics Unit, before the Senate Judiciary Committee, Subcommittee on the Constitution, Dated May 5, 1989
- [6] "Turning Guns into Goats", by Paul Craig Roberts, published in The Washington Times, March 29, 1989.
- [7] "Crime in the United States", Uniform Crime Reports 1987, Federal Bureau of Investigation, Department of Justice, July 10, 1988
- [8] Testimony of James Jay Baker, Director, Federal Affairs, National Rifle Association, Institute for Legislative Action, Congressional Record-Senate (February 28, 1989)
- [9] Testimony of Neal Knox, Executive Director, The Firearms Coalition, Congressional Record-Senate (February 28, 1989)
- [10] "The Right to Keep and Bear Arms", Report of the Subcommittee on the Constitution of the Committee on the Judiciary, United States Senate, 97th Congress, February 1982

# SAAMI

SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC.

## POSITION PAPER OF THE

ROBERT T. DELFAY  
EXECUTIVE DIRECTOR

### SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE

#### A RESPONSIBLE APPROACH TO LEGISLATION REGULATING "ASSAULT WEAPONS"

The Sporting Arms and Ammunition Manufacturers' Institute (SAAMI) is a trade association, with membership comprised of leading United States manufacturers of sporting firearms and ammunition. Founded in 1926, this organization has been actively involved in the publication of industry standards, coordination of technical data and in the promotion of safe and responsible firearms use. A listing of SAAMI members is appended.

SAAMI advocates the right of citizens to be secure in their homes and to enjoy their chosen livelihood and recreational pursuits. Throughout its history, SAAMI has supported the responsible, law-abiding individual's right to own and use firearms for legitimate purposes. As a group, firearms owners are one of the most law-abiding groups in the nation and have historically voiced their support for the law enforcement community. SAAMI has opposed restrictions on the acquisition and ownership of firearms and ammunition which would violate the Constitution or have no demonstrable effect on the unlawful use of firearms.

During the past several weeks of raging debate over "assault rifles", some far-reaching legislation has been proposed to limit private ownership of all semi-automatic firearms. SAAMI seriously questions the direction which that legislation has taken.

Members of Congress, state legislatures, and town councils who are concerned with the scourge of drug violence sweeping our nation are addressing the wrong problem by suggesting that restrictions on semi-automatic firearms are a reasonable and effective solution to the serious problem of crime, drugs and violence in our society. In many instances, the term "semi-automatic" is used as a substitute for "assault rifle".

This characterization of semi-automatic firearms is incorrect and irresponsible. As a result, many bills introduced at the federal, state, and local levels purport to ban "assault rifles" but would, in fact, ban legitimate semi-automatic firearms owned by millions of law-abiding citizens for sports, hunting, collecting and personal protection.

SAAMI believes it is in the best interest of all citizens of this nation, shooters and non-shooters alike, that this legislative debate be raised to a more responsible, more accurate level. If this is not done, lawful owners may be deprived of the ownership and legitimate use of traditional firearms.

Semi-automatic firearms are not the same as "assault weapons" and are not machine guns. Semi-automatic firearms require a separate pull and release of the trigger each time the gun is fired, and the vast majority of semi-automatic rifles, shotguns, and handguns will fire only a limited number of shots without reloading. Traditional centerfire semi-automatic rifles and shotguns, for example, generally have an ammunition capacity of 5 rounds, and semi-automatic shotguns used for waterfowl hunting must be capable of firing no more than 3 shots before reloading. The average semi-automatic handgun holds no more than 15 rounds of ammunition. In contrast, military "assault weapons" are intermediate-caliber machine guns which can fire fully automatically and are distinguished by large magazine capacities appropriate to their military usage.

Semi-automatic firearms have been popular for hunting and other sporting purposes since the early 1900s. They have been legal for use in hunting in 48 states since early in the century. It is estimated that over 20 million semi-automatic firearms of all types have been sold in this country since 1905.

Semi-automatic firearms are no more powerful or lethal than any other type of firearm that shoots the same ammunition.

The debate over semi-automatic firearms has been engendered by the publicity concerning the Stockton, California, tragedy

and the increasingly severe drug-related crime problem now threatening our society. The vast majority of these crimes are committed by criminals whose possession or use of firearms of any type is prohibited by current law.

In light of the foregoing, SAAMI recommends the following public policy:

1. The possession of any "extra capacity" magazine in combination with the possession of a semi-automatic firearm, other than .22 caliber Rimfire, should be regulated. "Extra capacity magazines" are detachable magazines which hold in excess of 10 centerfire rifle cartridges or shotgun shells, or detachable pistols magazines which hold in excess of 15 centerfire cartridges.
2. Semi-automatic firearms as such should not be the object of any legislative prohibition. It is actually the large magazine capacity, rather than semi-automatic operation, which is the proper focus of this debate.
3. The nation's firearms dealers should be provided as soon as is practicable with a means of immediate electronic screening of firearms purchasers to identify individuals attempting to purchase firearms in violation of existing state or federal law.
4. The nation's media, particularly the major television networks and the film industry, should reconsider their production and distribution of films and television programming which emphasize, indeed glorify and romanticize, the use of rapid-fire or para-military type assault weapons.
5. There should be active enforcement of the existing Firearms Owners Protection Act, and similar state laws, which make it a federal felony, punishable by mandatory penalty, to use a firearm while committing a drug trafficking offense. Such authority should be augmented as necessary.



SAAMI recognizes the magnitude of the problem facing this nation's criminal justice and penal systems resulting from illegal drug trafficking. However, legislation which deprives law-abiding citizens of the right to acquire and possess firearms of their choice for recognized purposes will not solve that problem.

Resolution of this issue requires responsible and objective discussion. SAAMI, therefore, further recommends that President Bush, through appropriate means, establish a forum for that purpose. SAAMI is committed to participation in that forum.

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Testimony  
to  
The Subcommittee on the Constitution  
of  
The Committee on the Judiciary  
of  
The United States Senate

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BACKGROUND

I'm 38 years old, college educated (but not degreed) and, I think, reasonably well educated in general. I'm a computer systems programmer by trade and my hobbies include photography and the shooting sports. I'm a fairly active competitive shooter and occasional hunter and take my firearms responsibilities seriously. I am a certified instructor in Basic Handgun, Basic Rifle and Shotgun and regularly am involved in teaching firearms safety and marksmanship to beginning shooters. As part of this training activity, I often act as a Range Safety Officer on a private shooting range facility. Having worked for a short time as an apprentice gunsmith, I do most of my own gun repair work as well. My involvement with firearms reaches back in my history to the time before I could ride a two-wheeled bicycle. Born and raised in northern Michigan, I was exposed to the shooting sports very early in life and have continued and expanded that involvement.

SOME GENTLE CORRECTIONS AND CLARIFICATIONS OF PREVIOUS TESTIMONY

Having followed the issue of the so-called 'ASSAULT RIFLE' for these last few months, I feel that some popular misconceptions are being given entirely too much play. Hopefully, I can correct some of the mistaken ideas. I will direct these remarks primarily to the testimony already presented to the Committee.

1. One of the 'facts' presented was to the effect that the so-called 'ASSAULT RIFLE' was capable of rates of fire of 500, 600 and even 850 shots per minute. That is patently false, since NO semi-automatic rifle, of ANY type, is capable of that. No shooter can work a trigger that fast! The speaker was, I think, referring to AUTOMATIC WEAPONS (MACHINE GUNS), rather than the SEMI-AUTOMATIC RIFLES that are being considered by the Committee.
2. A common statement throughout the testimony is that the so-called 'ASSAULT RIFLE' can be converted to a AUTOMATIC WEAPON easily and quickly. Information from Ed Owens, at the Technical Department of the Bureau of Alcohol, Tobacco and Firearms, seems to contradict that statement. All semi-automatic weapons to be imported must first be submitted to BATF to determine whether they can be converted to AUTOMATIC WEAPONS and if so, importation permits are refused. My information is that to convert, for example, an UZI SEMI-AUTOMATIC carbine requires five replacement parts and one very precisely drilled hole. Even though the American makes are exempt from these requirements, most submit VOLUNTARILY to this testing procedure. My point? Only that, contrary to popular belief, the 'ASSAULT RIFLES' currently available in the United States are NOT EASILY CONVERTED to AUTOMATIC WEAPONS.
3. Another popular misconception is that the current genre of so-called ASSAULT RIFLES are unsuitable for any sporting purpose. This seems to be a result of the non-hunters among us and their lack of a full understanding of the hunting sports. Ask any Tennessee boar hunter what he looks for in a rifle and you'll get an answer that describes the current so-called ASSAULT RIFLE almost perfectly. He needs a rifle that

is relatively short, to swing around in thick brush, fairly powerful, since a wild boar is very tenacious, semi-automatic, for a quick second shot if necessary, and reliable under adverse conditions.

Competition shooters use military-style semi-automatics for SERVICE RIFLE matches, including the National Matches, at Camp Perry, Ohio, on a regular basis. With more and more people of smaller stature entering these matches, we also see a growth in the numbers of the so-called ASSAULT RIFLE, because of the ease of handling and reduced recoil. Far from being ostracized, these smaller service rifles are proving that, in terms of accuracy, they are more than a match for the larger, heavier-recoiling and heavier rifles commonly used only a few short years ago.

4. Testimony was offered to the effect that some of the newer carbine-type ASSAULT RIFLES inflict much more damaging wounds and many more wounds per incident. A specific case presented concerned the 9mm Parabellum and the inference was made that this was a 'NEW, HIGH-VELOCITY' cartridge. Let me point out that the 9mm Parabellum was introduced to the public in the same year as the .38 Special, 1902. There's nothing new about it except the weapons it's being fired from. The weapons listed for this cartridge in that discussion also includes one that doesn't even exist, at least in 9mm Parabellum. I refer to the MAC-11, which takes the smaller and less powerful .380 ACP cartridge. The severity of wounds from any so-called ASSAULT RIFLE in 9mm Parabellum will necessarily be more severe than similar wounds from handguns in the same calibers, due to the longer barrels. Comparison of published factory ballistics indicates that the same condition will hold true for ANY handgun cartridge fired in a barrel that is significantly longer than the average handgun barrel.

The presence of more wounds per incident only indicates that the assailant was more willing to keep pulling the trigger. The choice of weapon really means very little in that respect. Equally numerous and terrible wounds might be delivered from almost any firearm, given the willingness to keep shooting on the part of the assailant.

5. Much mention has been made about large-capacity magazines and ammunition belts. Yet I've been unable to locate ANY reference to a belt-feed weapon of any type on the civilian market, other than the Title II LICENSED machine guns currently in private hands. Large magazines are freely available, and probably always will be, Congressional action notwithstanding. They are easy to manufacture and to hide. Nearly any competent sheet-metal worker could build a magazine, of any size, without too much trouble. Similarly, because of their intrinsic size, they could be smuggled in from other countries, as easily as drugs or liquor.

Ammunition belts have a place among sportsmen as well, even though their firearms can't use them directly. Many sport shooters are avid bargain hunters and buy up surplus military ammunition for training and practice. Much of this ammunition is packed in a 'METALLIC DISINTEGRATING LINK' belt. By disassembling this belt, a somewhat tedious process, the shooter can acquire a supply of good-quality

ammunition. For practice purposes, this represents a considerable saving to the shooter. (Indeed, I do this myself. It's fairly good ammunition.) By selling this surplus ammunition, the military can realize a significant saving as well. It's much less expensive than simply dumping outdated ammunition into the sea. (Large quantities of ammunition are also available in 8-round clips, for the M-1 Garand rifle, hardly an ASSAULT RIFLE at 9.5 pounds.)

6. The statement that the so-called ASSAULT RIFLE is the weapon of choice for 'cop killers' seems to be contradicted by the FBI's Uniform Crime report for 1987. Of the 8 peace officers killed by rifles in 1987, only ONE was killed by a caliber that MIGHT have been from the so-called ASSAULT RIFLE. Five of the other seven were killed by the .30-30 Winchester cartridge, which is available only in rifles of the turnbolt action or level action type. The remaining two officers were killed by .22 rifles. These statistics seem to contradict previous testimony.
7. Statements have been made to the effect that the vast majority of peace officers favor the controls being considered. I have to ask two questions about these statements. Firstly, was a survey conducted that supports this position, and secondly, does the Fraternal Order of Police really represent the majority of the 'cops on the street', as opposed to those in management positions? Of the 'street cops' I know, NONE are members of F.O.P. (The number of F.O.P. members cited seems to imply that most 'street cops' are not members.)
8. In all the bills being considered, no clear definition of the so-called ASSAULT RIFLE has yet emerged. The definitions presented are either so vague and generalized that nearly ANY semi-automatic firearm could be included, or so specific that any manufacturer could produce a 'knock off' copy that circumvents this legislation.

I hope the committee is aware that the distinctions between the so-called ASSAULT RIFLE and the hunter's semi-automatic rifle are purely cosmetic. There really is no feature of the actual working mechanism that will distinguish one from the other. The NRA currently has a 12-minute video tape that portrays this very graphically, by showing the process of converting a very popular sporting rifle to something that appears much more menacing in a few short minutes. Mechanically, the two are the same but cosmetically they appear completely different. Are we so close-minded that we judge things solely by appearances? I thought we had come to terms with that with the civil rights movement.

One further note: several times I've used the term ASSAULT RIFLE. Because of the confusion I perceive in this term, let me offer MY definition of ASSAULT RIFLE, as well as the few other terms I've emphasized here.

ASSAULT RIFLES (true assault rifles) are fully-automatic weapons, capable of discharging cartridges continuously for as long as the trigger is held down. Most of the weapons that fall into this category also have a selector lever that allows operation in a SEMI-AUTOMATIC mode but it's not a necessary feature. These types of weapons are often referred to as 'TITLE II' weapons, regulated by the National Firearms Act of 1934 and the Volkmer-McClure act as well.



SO-CALLED ASSAULT RIFLES are really semi-automatic rifles that are styled after similar-appearing military weapons. These similarities are only cosmetic.

SEMI-AUTOMATIC rifles (and pistols and shotguns) are designed to discharge a single cartridge with each pull of the trigger. Conversion of these to true ASSAULT RIFLES constitutes a Federal felony and is a difficult task, beyond the capabilities of all but a very few gunsmiths.

I deplore the use, or misuse, of the word ASSAULT. While ANY firearm may be used to commit the crime of ASSAULT, very few are actually used for this purpose, in terms of percentages. On the other hand, the crime of ASSAULT may be perpetrated with knives, clubs, fists or any other article that might be employed as a weapon.

#### CONCLUSIONS AND PERSONAL OPINION

The information I see disseminated in the various forms of media outlet and some of the statements I here and see from respected authorities with regard to the so-called ASSAULT RIFLE are prompted by a wealth of false and misleading information. The media have, by misrepresenting facts and presenting opinions as facts, misled the public and created an atmosphere of hysteria, using a convenient scapegoat to cover the failures of our society. Many well-intentioned individuals have joined this panic, either to create the impression that they have the magic solution to all our problems or to delude their followers into thinking that they are doing something positive.

The real problem, as I see it, is the complete breakdown of our criminal justice system. We've become so lenient in our treatment of the criminal that fear of retribution has become contempt for the entire justice system. We seem to have forgotten that prisons are a place of punishment, not rest homes for the weary.

We need more prison facilities and a justice system that truly punishes the law-breaker. We molly-coddle the offender, with plea bargains, felony probation, parole, early release and furlough programs, so much that fear of imprisonment has been replaced by contempt.

President Bush has proposed additional funds for the War on Drugs, to be used in adding more personnel to various law-enforcement agencies, more prison facilities, etc. What about some funding for drug-abuse rehabilitation programs? Some sort of amnesty-for-abstinence program for users who voluntarily submit to these types of programs could go a long way toward reducing the market for drug dealers. Put some teeth in the program to enforce compliance and some form of reward, however small, to provide further incentive. If the drug dealer can't find a buyer, he has no business, and no profits.

The states need more funds for law enforcement and prisons as well. Much of the law-enforcement burden falls on the states and smaller governmental units, most of which are chronically under-funded. Local police departments can't always devote the time and manpower to deal with the drug problem because the necessary resources just can't be funded.

President Bush also proposes stiffer penalties for use of semi-automatic weapons in crime. Let me propose that the use of ANY firearm in a crime warrants a stiffer penalty. A murder victim is equally dead whether he is shot with a semi-automatic .45 ACP pistol, for example a Colt M1911, or a revolver in the same caliber, for example a Colt M1917. The victim is equally dead and the perpetrator is equally guilty of causing that death. A rifle employed for murder is equally deadly, be it a semi-automatic in .308 Winchester or a bolt-action in .308 Winchester. The distinction is really trivial, as is the size of the magazine.

The media needs to learn some self-restraint, either from within or with outside help. Balanced reporting of ALL sides of an issue is a necessary adjunct to our form of government. Slanted reporting, sensationalism, emotionalism, misrepresentations and mislabeling have no place in a reporting environment. Similarly, the glorification of violence that pervades the entertainment industry is a sad commentary on the media in the quest for the almighty dollar, regardless of the social consequences. Our young people see hours of television every day and all that many ever see is the "Bang, bang, shoot 'em up" or "Beat 'em up". We don't need that imprinted on the minds of the young. Now the major networks are seeing ever-increasing competition from cable companies, PBS, etc. Why? I think that the viewers are becoming tired of violence; why watch Jesse James when Jaques Cousteau is so much more interesting?

The media are violently opposed to any legislative action that might curtail the First Amendment rights they enjoy, yet irresponsible reporting has been a contributing factor in the death of at least one peace officer, as detailed in previous testimony. Every schoolchild knows that police officers wear bullet-resistant clothing now, so their assailants are learning to shoot for the head. Instead of enhancing officers' safety, the vest has become a liability. A wound to the torso might not be fatal; a head wound almost always results in permanent disability. I'm sure that the widows and families of slain officers don't appreciate the helpful tips offered to 'cop killers' by the media. If the media want the First Amendment held in such high esteem, then the Second Amendment deserves the same treatment.

I see two problems in these Bills that are, as yet, unaddressed. Firstly, the word 'confiscation' comes to mind. In and of itself, that MIGHT not be bad, but the consequences are frightening. Many of the law-abiding owners of these rifles MIGHT turn them in; how are they to be compensated for the loss? Some of the rifles named are EXPENSIVE. The Colt AR-15 costs about \$650, not the \$200-\$300 cited in testimony. The heavy-barrel target version costs even more. Most gun owners can't afford to just kiss that goodbye. Secondly, how will this take gun from the hands of the armed criminal? He will simply ignore this law, just as he ignores all other laws. Thirdly, this type of action would set a precedent that would jeopardize property rights in general. If Congress decides that certain types of wrenches are unsafe, used in crime, etc. does that mean that these will be confiscated as well? To me, it seems to be a very dangerous precedent.

I strongly suggest that, rather than an outright ban, some form of background check mechanism be instituted, so that the TRANSFER can be

regulated. A start might be to require that all transfers be affected through Federally licensed dealers and give these dealers the tools to conduct a background check. Virginia has recently passed a new statute that might provide some useful guidelines and ideas.

Millions of Americans, myself included, never run afoul of the criminal justice system, yet these bills would penalize us unfairly just because we exercised our Second Amendment rights. Let's focus on the real problem, the drug dealers and users.

I support the fight against crime, but I ALSO support the Second Amendment to the Constitution. I don't believe that these bills under consideration by the Committee will truly have any affect on the crime problem.

Thank you for allowing me to offer this testimony.

REFERENCES

THE GUN DIGEST, edited by Ken Warner, for the years 1979 through 1988

Separate editions for each of the years cited. This source is a compendium of information for the shooter, encompassing firearms, ammunition and accessories, from manufacturers and independent sportswriters.

CRIME IN THE UNITED STATES, the FBI Uniform Crime Report, for the year 1987

This is a report, published annually by the Justice Department, that describes the numbers and types of major crimes committed for the reporting year. It is the 'thermometer of crime', gathering almost all available statistical information into a single comprehensive report.

CARTRIDGES OF THE WORLD, 5th edition, by Frank Barnes

This book, rather large in format, offers a description of all the small-arms ammunition that is, or has ever been, available to the general public. Brief histories of each cartridge are offered, along with some common uses and, where available, ballistic data.

JANE'S POCKET BOOK OF PISTOLS AND SUBMACHINE-GUNS, Collier Books

This book is a guide to the various types of pistols and submachine-guns used world-wide. Military weapons dominate the material, with references to civilian weapons where information is available. Similar types are grouped together, with descriptions of differences wherever appropriate.

Records of previous testimony

Conversations with peace officers known to me personally.